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THE

WORKS

OF

JEREMY BENTHAM,

PUBLISHED UNDER THE SUPERINTENDENCE OF
HIS EXECUTOR,

JOHN BOWRING.

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SCOTCH REFORM;

CONSIDERED WITH REFERENCE TO THE

PLAN PROPOSED IN THE LATE PARLIAMENT,

FOR THE

REGULATION OF THE COURTS

AND THE

ADMINISTRATION OF JUSTICE IN SCOTLAND:

WITH

ILLUSTRATIONS FROM ENGLISH NON-REFORM:

IN THE COURSE OF WHICH,

DIVERS IMPERFECTIONS, ABUSES, AND CORRUPTIONS, IN THE ADMINISTRATION OF JUSTICE, WITH THEIR CAUSES,

ARE NOW, FOR THE FIRST TIME, BROUGHT TO LIGHT.

IN A SERIES OF LETTERS

ADDRESSED TO

THE RIGHT HON. LORD GRENVILLE, &c. &c. &c.

WITH

TABLES,

IN WHICH THE PRINCIPAL CAUSES OF FACTITIOUS COMPLICATION, DELAY, VEXATION, AND EXPENSE, ARE DISTINGUISHED FROM SUCH AS ARE NATURAL AND UNAVOIDABLE

BY JEREMY BENTHAM,

OF LINCOLN'S INN, ESQ. BARRISTER AT LAW.

THE SECOND EDITION, WITH FOUR ADDITIONAL TABLES,

SHOWING THE ABUSES IN CASES OF APPEAL.

LONDON: J. RIDGWAY, 170, OPPOSITE BOND STREET, PICCADILLY: 1811.

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ADVERTISEMENT

THE matter contained in the four following Letters, including the two sheets of Tables* subjoined to them, was written, it will be observed, at different times in the course of the years 1806 and 1807.

In the mean time, a variety of incidents has taken place, and the face of the whole business, as laid before Parliament, has undergone a variety of changes. But, as to the matter of the ensuing Letters, if there be anything in it that presents a prospect of being of use, that use will not be found to have received any diminution from any of those changes.

A continuation is in the press, comprising the originally proposed *Chamber of Review;* the two arrangements proposed, one or other of them, to serve instead of it, by the *Lord President* and ten others out of the fifteen Lords of Session; and the Bill said to have been laid upon the table of the House by the *Lord Chancellor* (Lord Eldon,) and printed by order, dated 10th August 1807.

In a separate work, is intended to be humbly submitted to Parliament, and in particular to the House of Lords, a plan for enabling the House to render, to suitors of all the three kingdoms, that justice, its inability of rendering which, has now for so many years been so severely felt by the public, and so explicitly acknowledged in the House.

A *Summary View* of the plan is already begun to be put into circulation.

* *Note.*—Four additional Tables accompanied the second Edition, which contained no other alteration on the first, except the addition of Letter V.

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LETTERS TO LORD GRENVILLE,

ON THE

PROPOSED REFORM IN THE ADMINISTRATION OF CIVIL JUSTICE IN SCOTLAND.

LETTER I.

My Lord, — In the account given in the public prints, of a speech of your Lordship's, on the occasion of the proposed reform, "relative to the administration of civil justice in Scotland," I observed a passage inviting suggestions from without-doors. Should these my humble endeavours be found productive of any useful lights, it is to that invitation that the subject will be indebted for them.

If Scotland feels, as no doubt she will, and does already, her obligations to your Lordship for the proposition itself, so ought the three kingdoms, with their dependencies, for the invitation coupled with it. In this they may behold a constitutional comment on the primitive text, *de minoribus principes consulunt, de majoribus omnes:* in this, the constitutional and only rational application of the principle of universal suffrage: information accepted from every source; suggestion, the work of the understanding, open to all; decision, the work of the will, confined to the comparatively few, among whom, without Polish confusion, it can possibly be shared.

According to the terms of the speech, as stated in the paper that lies before me, in the designation made of the persons from whom communications were called for, the members of the Scottish Bar were the only persons particularly mentioned. If, from the letter of the invitation, any such limitation could with propriety be deduced, it was doubtless because, at the moment, the situation so designated presented itself to your Lordship's notice, as the only source from which, on such a subject, any useful information could naturally be expected. Deviations from the ordinary state of things could not, in so general a survey, have naturally been taken into the account. But as Africa of old was noted for physical, so have the British islands been in modern times for psychological singularities. Hence it is, that, so far as the habit of contemplating the field of law in the point of view in question, that of a field of reformation and improvement (the very point of view, in which, on the present occasion, it fell in your Lordship's way to bestow a glance upon it) — I mean, so far as the *length* of that habit can be regarded as capable of aiding the effect, or supplying the deficiency, of other qualifications — neither the Scottish bar, nor any other description of persons, could probably afford a pen, the suggestions of which would be less exposed to the imputation of temerity, than these, how small soever may be their value, which are now courting the honour of your Lordship's notice.

Two noble and learned lords, in whose wisdom and experience your Lordship finds, day by day, an ever-increasing treasure, wait on this occasion, as on all others, your Lordship's signal for pouring out the stores of it. Some time before those illustrious persons had, either of them, begun to make his profit of the imperfections, or, as some would say, the abuses, with which the *regular* system of procedure is spotted, or of which, as some would say, it is composed, the obscure interloper, whose bow is now making to your Lordship, had made it the business of his life to inquire into the means of remedying them.

As to the measure itself, viz. that of endeavouring to infuse the spirit of reform into Scottish judicature, preceding administrations reckoned this, it seems, in the number of their velleities: what they had been thinking of doing, your Lordship has done.

In the sort of relation your Lordship bears to the measure, I find a relief from an unpleasant difficulty. In your Lordship it beholds its patron and introducer; the author, it is matter of ease to me not to know. To the Athenians their legislator presented (such was his plea) the best of all plans that would have been borne with: to Scotland, under a most crying urgency, Lord Grenville presents the best, or perhaps the only plan that was to be had.

As to the general complexion of the plan, to prevent temporary misconceptions, permit me, my Lord, to submit to your Lordship, at this early period, the general result of my researches, in two very simple propositions: that in point of utility, there is enough in it to afford an ample justification to the provisional acceptance your Lordship has been pleased to give to it: that at the same time, when minutely sifted by a not unexercised hand, and with that continuity of attention

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which it was impossible, in your Lordship's place, to spare for it, it will be found to fall extremely short of the professions, and perhaps expectations, of the learned author, not to speak of your Lordship's indubitably sincere and generous wishes and intentions.

In the track of improvement, by a rare coincidence, for a certain part of the way, the interest of the suitor, that is, of the community at large, and the interest of the lawyer, happened to go hand in hand: — just so far I observe the interests of the community really pursued. But, a little further, the interests divide: and there it is that I see that separation taking place, which, in my view of the matter, could not but take place, the interest of the community pursued in demonstration only — the opposite interest of the lawyer being carefully protected, and even advanced, in reality and effect.

Before I proceed any further, I find myself under the necessity of stating a little personal incident, the mention of which would not have been thus obtruded on your Lordship's patience, but for its indissoluble connexion with the present enterprise. Your Lordship's invitation found me employed in putting, as I had flattered myself, the last hand to a work of a somewhat new complexion on the subject of EVIDENCE; a work which, though of greater bulk than I could have wished, was itself but an off-set of a still larger one, not wanting much of its completion, and designed to give a comprehensive view of what, in that extensive subject, taken in all its branches, appeared fit to be done in the way of law. Of that off-set, the object was — to bring to view the reasons, by which I had been satisfied that whether the Roman, the English, or any other system, were resorted to, the established rules of evidence, occupied principally in putting exclusions upon the light of evidence, were, almost without exception, adverse to the ends of justice; a conclusion facilitated, in no small degree, by the observation, that there is not one of them, in English practice at least, that is not departed from, and, without inconvenience or suspicion of inconvenience, set at naught, and that for reasons that can have no weight or truth in them, on any other supposition than that of the impropriety of the rule, in every instance in which it is observed.

In looking for the causes of this inconsistency (for where, in the department of legislation, a full light has been thrown upon a subject, *causes* are a topic that can never have been passed by,) I saw reason to suspect — and that reason gaining strength at every step — that what at first view had presented itself as the result of primeval blindness and imbecility, was referable, perhaps, in a certain degree, to those causes, but probably in a much higher degree to sharp-sighted artifice; that to enable themselves to extract from it that profit which constituted their recompense and inducement for taking their part in it, and that with as much *ease* to themselves as the task of gathering in the *profit* admitted of, it was necessary for the founders, and successive supporters of the system, to give to it a direction, opposite at every turn to the ends of justice; that among the leading features or main pillars of this system, were the exclusions put upon the most instructive and indispensable *sources* of evidence; and in regard to such information as was not in itself excluded, the preference given to a variety of artificial and less trustworthy *shapes*, in which they found means to clothe it, to the exclusion of the more natural and more trustworthy; but that these were but a part of a numerous and complicated system of *devices*, all tending to the same altogether natural, but not the less sinister end: and that, in a word, on these points, as on all others, the reason why the system was and is so bad as men feel it rather than see it to be, is, that the *power* found itself in company with the *interest*, and consequently the *will*, to produce as bad a system as the people, with the legislature at their head, could in their primeval, and as yet but little ameliorated, state of relative ignorance and helplessness, be brought, by the utmost stretch of artifice, to endure.

Thus it was, that the delineation of the instruments employed in the planting and culture of the predominant system (I say predominant — for there exists another of very different complexion, of which presently, and which, howsoever overpowered, has nowhere been altogether killed by it,) constituted a sort of episode, though, for the full comprehension of the subject, not an unnecessary episode, to the work having for its main subject the *exclusions* put upon evidence. Finding, then, in the system of reform put into your Lordship's hands, what I could not but expect to find in it as a matter of course — that the profit and ease of the man of law were as carefully provided for as ever, the interests of the people, in their character of suitors, as completely sacrificed as ever to those original, and, with reference to the man of law, so much nearer objects — and that all the advantage given to the suitor was that comparatively small, though in itself not inconsiderable portion, in which the licensed plunderer would be a sharer with him: finding, in a word, that of all the *devices* above spoken of, there was not one, the full mischief of which was not reserved to the suitor, the full benefit, to say no more, reserved to the man of law, it was my original intention, for the more complete elucidation of the proposed plan of reform, and the resolutions by

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which the outline of it is delineated, to have subjoined the episode above mentioned — a sort of picture of the law of procedure — by way of appendix to this address. But this picture not being yet in a state of complete readiness for the press, and at the same time the bulk of it (according to the measure taken of it by my fears) too large for the proportion of your Lordship's time, which, even upon the most sanguine calculation, could be expected for it; the only feasible course seemed to be to submit to your Lordship, instead of the picture itself, a sort of table of the contents of it; a table bearing about the same relation to the work at large, as in the case of those rude sketches, which, according to panoramic custom, are distributed for the accommodation of the curious, whose visits are received or expected, for the picture of the chief seat of Scottish judicature as exhibited in Leicester-square, for the purpose of assisting their recollections or anticipations.

In Scotland, as in England, and elsewhere, the system of judicial procedure has been, in the main, the work, not of legislators but of judges: manufactured, chiefly in the form — not of real statutory law — but of jurisprudential law: — imaginary law, consisting of general inferences deduced from particular decisions. By primeval indigence, and inexperience on the part of the sovereign, judges left without salaries, but left with power to pay themselves by fees. Hence, as will be seen, a constant opposition between the ends of *justice*, and the ends (the original, and thence the actual ends) of *judicature*.

Proper direct end or object of the system of procedure (or *adjective* branch of the law,) giving execution and effect to the predictions delivered, to the engagements taken, by the other branch, the main or *substantive* branch of the law: viz. by decisions pronounced in conformity to it. — *Direct* ends of justice, prevention of *misdecision* (decision unconformable to the regulations and arrangements belonging to the substantive branch of the law,) and *failure of justice*. Failure of justice the same thing in effect as misdecision to the prejudice of the plaintiff's side, but taking place without decision, and, for want of it, frequently without legal demand made, and for want of it. — *Collateral* ends of justice, prevention of delay, vexation, and expense, in so far as superfluous, or preponderant (viz. over the mischief from misdecision or from failure of justice.) Misdecision, when to the prejudice of the defendant's side, may be considered either as comprised under the head of *vexation*, or as constituting a separate head of collateral inconvenience, and the prevention of it as constituting a separate end of justice.

Interest of the people, in the character of suitors, perpetual and complete fulfilment of the ordinances of the substantive branch of the law (the utility of which must, on this occasion, be assumed,) and thence of the direct ends of justice. Interest of the judges (the authors of the system of procedure,) maximum of *profit* and *ease*; profit, as much as could be extracted, with as much ease as was consistent with the extraction of it.

Profit and ease increased by the same cause — the increase of the aggregate quantity of fees. Justice thus denied to the poor, to the labouring classes, to the great majority of the people, as being unable to pay the fees; thence the trouble of administering justice to them saved.

Limits set by various causes to the quantum of the fees exigible on each occasion: aggregate of fees thence not otherwise increasable, than by increasing the number of the *occasions* on which fees were exacted: factitious delay, vexation, and expense, the results or accompaniments of the increase so given to the number of those occasions. Aggregate mass of judges' profit, increasing with the aggregate mass of delay, vexation, and expense; hence the actual ends of judicature, the interests, and consequently the exertions of judges, maintained in a state of constant opposition to the interests of the people, and the ends, viz. thus far only the *collateral* ends, of justice. But, from delay, vexation, and expense, result, in various ways, failure of justice, and misdecision, to the prejudice either of the plaintiff's side or the defendant's, whichever be in the right: hence a complete and constant opposition between the ends of judicature, and the *aggregate* of the several ends of justice.

Multiplication of the occasions of extracting fees, the cause of factitious complication, intricacy, obscurity, unintelligibility, uncognoscibility, in the system of procedure. By this complication a sort of sham science produced, and with it, on the part of the suitors, the necessity of having recourse to the members of a distinct class or fraternity thus raised up, sole professors of that science, and of the arts belonging to it. Profit of these professional, as well as of the official, lawyers, arising out of the mass of factitious delay, vexation, and expense, and increasing along with it, the profit of the one class going hand in hand with that of the other. Hence the closest community and general identity of interests; — a virtual partnership, which may be called the *law partnership* — with the judges, as managing partners, at the head of it.

On the part of *malâ fide* suitors on both sides (suitors conscious of being in the wrong,) an interest in increasing the quantity of factitious delay, vexation, and expense: this mass of abuse their only instrument to work with; employed by *malâ fide defendants* for staving off, and oftentimes finally eluding, compliance

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with the just demands on the other side: by *malâ fide plaintiffs*, for forcing compliance with unjust demands, or, on the occasion of some trifling demand, gratifying enmity, by the distress or ruin of the object. Community of interests thus effected, between *malâ fide* suitors, *i. e.* dishonest men in general, and the members, official and professional, of the law partnership.

Malâ fide cause, a cause in which a party on either side is in *malâ fide*. Proportion of *malâ fide* to *bonâ fide* causes, in some instances as great as that of 89 to 1. In England, the Exchequer Chamber an authoritatively reported and notorious example.

Truth, the handmaid of justice; mendacity, of injustice. Interest which the judges had and have, in encouraging to the utmost the vices of mendacity on the part of suitors, that is, of the body of the people. Propensity to injustice being the source of *malâ fide* suits, and *malâ fide* suits still more profitable than *bonâ fide* suits, hence the interest which the partnership has, in placing and keeping in a state of corruption this the most important part of the morals of the people. Injustice being the great source of lawyers' profit, hence love of injustice, hatred of justice, passions unnatural to all other men, natural to lawyers of all classes. The lawyer, but more particularly the judge, being under the constant necessity of concealing his passions and vices, as well as the interests by which they are generated — of cloaking the vices under the semblance of the opposite virtues — hence, under the influence of the still-existing mode of remuneration, insincerity, hypocrisy, and lawyercraft, become natural, and in a manner necessary, to the appointed guardians of the public morals.

A man being the better qualified for concealing his own vices from others, the more perfectly he has succeeded in concealing them from himself, hence a sort of imbecility — a relative and partial imbecility — a disease of the understanding: — another vice endemial among lawyers. Hence a general propensity and aptitude, to mistake for justice the injustice by which they profit.

Fees thus rendered the matter of corruption. Various channels, some open, some more or less disguised, through which this matter has been taught to flow, into the pocket and bosom of the judge. Examples: — Receipt *propriâ manu*; — Sale of a fee-yielding office for full value; — Fine or *bonus* on admission; — Fee-yielding office given in lieu, and to the saving of the expense, of other provision for a son, or other near relation, or dependent, he doing the duty — or else not doing the duty, but paying a deputy; — Fee-yielding office given, or the profit of it made payable, to persons standing as trustees for a principal, declared or undeclared; if undeclared, supposed of course to be the judge himself.

Under this state of things, the members of the law partnership, natural and irresistible enemies of the rest of the community. Judges, and the other official members, reconcilable enemies: reconcilable, viz. by the substitution of salaries to fees; but not unless the conversion extends, without exception, through all the offices: on these terms, and on these alone, would the partnership be dissolved. The professional members, enemies absolutely irreconcilable; because professional profit admits not of any such compensation. The moral diseases endemial to this branch of the partnership, not, like those of the other, capable of a complete cure: — but yet of a very considerable remission; viz. by cancelling the *mendacity-license*, granted at present to them and their clients, in the manner explained below.

Were the mass of suffering, inflicted on the people by delay, vexation, expense, and consequent misdecision, as above, no more than equal to the mass of enjoyment accruing to the law partnership by profit gained, there would be no use in the substitution of salaries to fees; no use in rescuing non-lawyers from oppression and pillage under lawyers. But, besides that the sum being given, and circumstances on both sides equal, enjoyment from gain is never equal to suffering from loss; and that the portion which, being added, converts affluence into opulence in the hands of the lawyer, being taken away, converts, as to the greatest part of it, indigence into absolute ruin, in the person of the distressed debtor, and his frequently no less distressed creditor; that part of the factitious expense which goes to the account of lawyers' profit, is but a part, and that commonly but a small part, of the whole loss, exclusive of the other evils that accompany it. Hence, although (which is impossible) professional lawyers' profit were to be done away altogether, the welfare of the whole community, lawyers and non-lawyers included, would in a prodigious degree be promoted by the change.

Separately taken, so minute in many instances are the parcels in which the matter of corruption, in the shape of fees, flows into the pocket of the judge, as to be, to appearance, incapable of creating any efficient sinister interest, in a bosom so strongly strengthened against its influence by remuneration in the shape of salary: but, the degree of seductive force, being as the *quantity* of the *aggregate* mass, and not affected by the *minuteness* of the *component* parts, this minuteness serves but to disguise the force of the seduction, without diminishing it.

System of procedure generated by the influence of this sinister interest, the *technical* or *fee-gathering* system: technical, from its

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nature; fee-gathering, from its object and its cause. Courts in which this system is acted upon, *courts of technical procedure*. Technical procedure, styled at present *regular*: courts in which it is acted upon, *courts of regular procedure*.

System of procedure, which has for its object the ends of justice, and for its model the course naturally pursued for the discovery of truth and administration of justice, as towards children, servants, or other dependants, in the bosom of a private family, the *domestic* or *natural* system of procedure; requiring nothing but appropriate powers for the extension of it, with its benefits, over the whole field of political judicature: to which head belong, in some, but not in all instances, the modes of procedure, which at present, in contradistinction to *regular*, are designated by the name of *summary*. Courts in which this system is pursued, *Courts of Natural Procedure*.

System of *technical* procedure, the work of judges, executed by them in the form — partly of *statutory* law (as in the case of English *rules and orders*, Scotch *acts of sederunt*, &c.) partly of *jurisprudential* law — with or without occasional patches in the form of statutory law, stuck on by the hand of the legislator, but mostly under the guidance of the members of the law partnership, official and professional, co-operating in concert; consequently under the influence of the sinister interest, opposite, as above explained, to the interests of the community and the ends of justice.

System of *natural* procedure, the work of the legislator, the legitimate and acknowledged legislator, acting in pursuit of the interests of the community, and the ends of justice.

Courts in which the system of natural procedure is exclusively or principally pursued — *In criminali*, the *courts martial* and preparatory *courts of inquiry*, in both branches, land and maritime, of the military service: in *criminali minori*, courts composed respectively of *commissioners* in matters of excise, customs, stamps, assessed taxes, hawkers and pedlars, London hackney coaches: *in criminali minori et civili*, the courts composed of *justices of peace*, acting singly or in numbers, disengaged from the technical trammels which await them in their periodical great sessions: *in civili*, the courts of requests called *courts of conscience*, the courts composed of *commissioners* in matters of *bankruptcy*; the courts, primary and of appeal, recently instituted for the collection of taxes on property and income; the arbitration courts, composed of judges nominated by the parties, but acting under powers given to them by regular courts, by authority from statute-law. — In Scotland, the courts composed of *justices of the peace*, sitting in periodical sessions, but acting summarily under the name of *small-debt courts*: in *ci-devant* France, the *consular* courts, courts composed of mercantile men, sitting on causes of a mercantile nature: in the Danish dominions, the recently established, more extensively operating, and justly celebrated *reconciliation courts*.

With us, again, in a higher sphere, the committees of either House of Parliament, sitting in the character of courts of inquiry: the several courts instituted of late years by the legislature for such a variety of purposes; — settlement of public accounts — liquidation of claims — investigation of abuses, or other objects of reform; — and, though last mentioned, yet not least, that noble and necessary bulwark of the constitution, which owes to your Lordship's illustrious father its existence and its name.

Were it on this occasion worth while, other cases might be found, in which justice has broke loose from the shackles forged for her in the cavern of chicane; but these may, I should hope, suffice to prove, and to the conviction of all but those who, by interest or interest-begotten prejudice, stand bound never to be convinced, that in no sphere of judicial inquiry, from the lowest to the highest, can the charge, either of impracticability or dangerousness, attach upon the honest pursuit of the ends of justice, by the light of common sense.

But the further this only honest system is from being either dangerous or impracticable, the more complete (as I flatter myself your Lordship will perceive) the moral impossibility that any further extension of it should meet the wishes, or so much as the endurance, of the man of law: — a system under which there is no *factitious delay*, *vexation*, or *expense*; nor consequently *factitious profit*, parcel of that expense; in which *misdecision* is but an accident, instead of being, as under the hitherto predominant system, a frequent and probable, not to say predominantly probable result, prepared by the operation of a variety of assignable, and peculiarly appropriate causes: a system under which *failure of justice* can scarcely find a place, instead of being, as under the predominant system, in virtue of the arrangements taken for the reconciliation of *ease* with profit, the inevitable lot of the great body of the people.

Devices, a denomination that may serve to characterize the several arrangements, principles, and practices, peculiar to the technical system, in contradistinction to the natural; all of them being so many modes of action, conducive at any rate to the *ends of judicature*; and therefore, upon the face of them, contrivances suggested by the desire of giving, to the greatest practicable extent, fulfilment to those sinister ends.

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Follows a list of those devices. For greater perspicuity, two columns are placed side by side, one containing a brief designation of the *device*, the instrument of technical procedure; the other, the correspondent state of things under the natural system of procedure.

Logically speaking, the quality of the natural system will be seen to be chiefly of the negative cast; constituted by the absence of those *devices*, which constitute so many characteristic features of the technical system.

The arrangements here referred to the natural system, are — partly so many arrangements actually in use and practice in the courts of natural procedure, in some, in most, or in all of them, — partly so many ulterior arrangements, such as, being conducive to the ends of the natural system, that is, to the ends of justice, would be necessary, to the purpose of giving, to the power and beneficial influence of the natural system, an extent commensurate with that of the whole field of judicature.

In the work at large, under the head of each device, explanations are given, where they appeared necessary, under four subordinate heads: — nature and description of the device; examples of the employment given to it in the established system; its repugnancy to the ends of justice; its subservience to the ends of judicature. These elucidations, all of them applicable to the English, most of them (but, happily for Scotland, not all of them) applicable to the Scottish, modification of the technical system, pruned and sheltered by your Lordship's learned adviser, would occupy too much room here, but remain, upon occasion, at your Lordship's command at any time.

I. *Arrangements of Natural Procedure.*

1. At the outset of the cause, and afterwards, where necessary, the parties, willing or unwilling, heard in the character of witnesses as well as parties, face to face; except in so far as, by reason of distance or otherwise, such confrontation and mutual explanation is, *physically* or *prudentially*, impracticable; prudentially, *i. e.* without *preponderant* mischief in the shape of delay, vexation, and expense: preponderant, viz. over the mischief in the shape of increased danger of misdecision, for want of the security against deception, afforded by such personal appearance, and consequent explanations and examinations; such conjunct appearance, preceded or not by *ex parte* appearance of the plaintiff, according to the nature of the case.

2. By or in the name of a party, no writing except in the character of *evidence;* nor in that character, except in the shape of minutes taken of the *vivâ voce* testimony, delivered by the parties respectively on such their personal appearance as above, when either party thinks fit provisionally to take upon himself the necessary expense: or where testimony in the ready-written form becomes necessary, either in the character of a *supplement* or that of a *succedaneum* to *vivâ voce* testimony, as per article 3. For the use of printing as a *succedaneum* to *writing* in the case of the instrument of *demand*, see article 11.

3. Testimony received in none but the best *shape:* viz. *vivâ voce* testification, subject to counter-interrogation, *ex adverso* and *per judicem:* except in so far as the necessity of time for recollection, arrangement, investigation, perusal of written documents, &c., requires a *supplement* in the form of ready-written testimony; or the impracticability

II. *Corresponding Devices of Technical Procedure.*

1. Parties excluded, from first to last, as effectually as possible, from the presence of the judge: in English practice, not admitted till the trial or other ultimate hearing: nor then, but because the court being open to individuals in general, parties may, if they please, come in with the rest: — an exclusion thus put upon that species of evidence, which, in respect of its *source*, is in general most instructive, and would most frequently supersede the necessity of having recourse to other evidence, putting an end to the suit within the same day that gave commencement to it. Uses of this *initial* meeting, as well for prevention of delay, vexation, and expense, as for security against mis-decision, stated in detail.

2. Abuse of writing, pushed to the greatest endurable length: — in English practice, in respect of discourses, delivered in the name of the parties (see articles 10 and 11;) in Scotch practice, in respect of additional discourses, delivered (as in case of *decreets*) in the name of the court, containing useless repetitions, in tenor or purport, of discourses already delivered in the name of the parties: the abuse always carried to the same excess, without regard either to the importance of the cause, or the capacity of the parties to bear the expense.

3. Testimony received, in some cases, when it could not be helped, in the best shape, as on jury-trial, in English practice: but in others, in various inferior, but (to the partnership) profitable shapes, to the exclusion of the best shape; *ex. gr.* 1. *Answers* (in English equity) ready-written testimony, extracted from a defendant, by interrogation

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(physical or prudential) of personal appearance produces a demand for testimony in that written form, in the character of a *succedaneum;* subject always to counter-interrogation, in the written form and mode (the *epistolary* mode,) in the first instance, and eventually in the *vivâ voce* form besides.

4. Tribunals *within reach;* consequently distributed over the country as equally as possible, regard being had to geographical circumstances, and to the state of the population at the time:—object to be aimed at, facility of repairing to the seat of justice (for the purpose of appearance *coram judice* as above, article 1,) and returning the same day, on the part of those whose abode is most distant from it

5. After the first meeting, if the suit be not then terminated, as under natural procedure it actually is in the majority of individual instances, time or times for subsequent appearances and operations, settled *pro re nata,* regard being had to the disposable time of the court, and the convenience of all parties.

6. Sittings *uninterrupted;* as at the London police offices: or at short and equal intervals; as in the courts of conscience.

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administered by the plaintiff's lawyer, in the *epistolary* mode alone, when in the *vivâ voce* mode it might have been extracted with incomparably less delay, vexation, and expense, as well as better security against deception and consequent misdecision. 2. *Depositions, i. e.* testimony collected in the Roman mode (pursued in English equity, ecclesiastical, and admiralty practice; in Scotch practice, as well as that of the continent of Europe, as the ordinary mode;) collected *vivâ voce, per judicem ad hoc, in secreto judicis,* without counter-interrogation *ex adverso;* and thereupon the tenor, or purport, real or pretended, entire or castrated, pure or interpolated, consigned to minutes, with lawyers' profit, increasing with their length. 3. *Affidavit* evidence, *i. e.* testimony ready-written, not subjectible to counter-interrogation, from any *quarter* or in any *shape:* in English practice, received, to the exclusion of every better shape, in every instance in which it was in the power of judges to receive it in this bad shape; *viz.* in bankruptcy petition causes before the chancellor, and in *motion causes,* principal and incidental (see article 15,) in all the courts: with lawyers' profit, as above.

4. Tribunals put *out of reach;* viz. by the immoderate extent given (and in great measure by powers usurped by the metropolitan judges themselves) to the geographical field of jurisdiction of the metropolitan courts; partly for the purpose of rendering the burthen of attendance intolerable, and thereby forcing suitors into the hands of the professional members of the partnership, partly for giving in this way a forced increase to the multitude of profit-yielding suits. Instruments of usurpation, in English practice, *pone* and *certiorari;* in Scottish, *bills of advocation.* In both countries, primary jurisdiction thus usurped, in direct contempt of still existing acts of the legislature.

5. *Blind fixation of times* by general rules, excluding all regard to individual exigencies, in respect of nature and quantity of business to be performed, diversities of distance, &c.; — of times, not for personal appearance of parties (that being excluded,) but for exhibition of written instruments, and performance of other operations, by hireling representatives, connected by a common interest with the judges. Sinister use and objects of the fixation; necessitating applications for dispensation (as per article 15,) making business in that shape; creating occasions and pretences for *nullification,* as per article 9.

6. Sittings at *long intervals; ex. gr.: terms,* with intervals of from a few weeks, to almost five months: *circuits,* with intervals of six or twelve months; with no more than a few days, or a single day, allowed to a place, whatever may be the quantity of business.—

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7. The cause heard from beginning to end by the same judge: he, by whom the evidence has been collected, deciding upon it the instant the collection is completed. Division of jurisdiction (a few cases excepted for special reasons) performed purely on the *geographical*, not on the *metaphysical* (or say *logical*) principle. No such distinction, as between pleas of the crown and common pleas; between law and equity.

8. No decision, but upon appropriate grounds; viz. on the joint *consideration* of the law (the article of substantive law in question) and of the evidence:—of the *tenor* of the law, where it has a tenor, as in the case of real, *i. e. statutory* law: of the *purport*, *i. e.* supposed purport, as in the case of imaginary, sham, fictitious, *i. e. jurisprudential* law.

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Sinister uses — creating delay, to sell to the *mala fide* suitor; giving him an interest in availing himself of the principle of nullification, &c.; affording ease and holiday-time for lawyers; necessitating trials at subsequent times, in different modes, with fresh fees.

7. *Bandying* the cause from court to court, on a variety of pretences, before the decision is given; one judge to collect the evidence — to hear and receive the testimony — without power to decide on it; another judge to decide on it without having heard it. Sinister uses — making business, *i. e.* occasion for fees; making complication, thence confusion, uncertainty, uncognoscibility, materials for sham science, &c. &c. Examples: — In English common law, causes sent from King's Bench, Common Pleas, or Exchequer, to Nisi Prius, or Assizes, and back again: in Equity, from Chancery, or Exchequer, to town examiners' office, or country commissioners, and back again: and from the superior to a subordinate judge: — In Scottish practice, vibrations between the provincial courts and the metropolitan; and in the metropolitan, between outer and inner house: in both, as well as in the provincial courts, between the *deciding* and some *evidence-collecting* judge.

8. Decision *without thought*, and upon *mechanical principles*: a consequence, and sinister use, of *blind fixation* of times; the judge knowing nothing of the cause, nor of the grounds of the decision to which he lends his authority: the party ruined, because his lawyer failed to comply with an intimation impossible to be complied with, or never made: pretence, the presumption that the party on whose side the failure is, is in the wrong: whereas, under the load of factitious expense, compared with the pecuniary faculties of the bulk of the people, inability through indigence is a cause much more probable. Imprisonment *for debt, on mesne process*, that is, before judgment, for an unlimited time, perhaps for life, one of the exemplifications of mechanical judicature: the judge, with his profit upon the jail, and upon the instrument of arrestation, sanctioning it by his signature; refusing to see either party, for fear of being obliged to see, either that there is no *ground* for this affliction, or no *necessity* for it: while, under natural procedure, a justice of peace, having no profit on any jail, never subjects a man to any such affliction, but for a limited time, nor without seeing both parties, and thence satisfying himself on both these points. *Outlawry*, another instance: any man, who is abroad, consignable to ruin, for non-compliance with a demand, of which it has been rendered impossible for him to be apprised: his property a prey to professional and official men, to the number of a score and upwards.

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9. No decision, but *upon the merits*, as above.

10. Not a syllable ever received from any person, witness or party, *vivâ voce* or in writing, without a *security for veracity*, equivalent to that which has been attached to the ceremony of an *oath*, or to whatever is provided in the case of an extraneous witness.

11. The general nature of the plaintiff's demand, and of the grounds on which it rests, in respect of title, in point of fact as well as law, consigned, as far as consignable, to *printed forms;* and so in regard to the defence: the allegations individualized, by names, places, times, &c., inserted in the blanks: as in the forms provided by divers statutes, and those given in Burn's Justice: the *demand*, viz. the payment or other service demanded at the charge of the defendant through the intervention of the judge, and the *ground* or grounds of the demand, in respect of *title* (events or situations, *collative* of the right) on the one hand, and (the defence not consisting in mere denial) the grounds of the defence in respect of *counter-title* (events or situations, *collative* of the defendant's right) bearing reference to corresponding articles of

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9. Principle of *nullification;* decision on grounds avowedly foreign to the merits:—a mere cloak for iniquity, and that a threadbare one, in every application made of it. the suitor punished for the failure, real or imaginary, of his lawyer. Sinister uses, making two causes out of one:—encouragement to *malâ fide* suitors, never to regard the worst cause as desperate:—arming judges with an instrument of arbitrary power: sufficient of itself to render the supposed checks illusory:—keeping up complication, confusion, uncertainty, uncognoscibility, matter of sham science, &c. &c.

N. B.—The use and benefit of this device carried, under the English branch of the technical system, to an extent altogether without example in any other, and in particular in the Scottish.

10. *Mendacity licence;*—to parties on both sides, a general permission of falsehood, granted by the judge, to extend so far forth as may be necessary to the giving birth and continuance to *malâ fide* demands and defences:—for this purpose, by a distinction purely factitious, allegations distinguished into *pleading*, and *evidence;* the licence granted to pleadings, denied to evidence:—in English equity practice, the licence withdrawn, but from the defendant's side alone, for the purpose of giving birth to such suits as could not have been instituted, but on the prospect of his evidence: the permission of mendacity, backed to a great extent by compulsion, in both branches (law and equity) of English practice:—in that, and to a greater extent than in any other, the licence granted, moreover, by judges to themselves; and acted under (as in judicial writs and records), and to a vast extent, by assertions which, when they cease to work deceit and injury, do so by accident only, and in so far as their falsity has become too notorious to be any longer productive of this effect.

11. Pleadings, in writing, at common law, called *special* pleadings, whenever the reply, called for by the plaintiff's *declaration*, is not understood to be comprisable under one or other of the four or five excessively abridged expressions, called *general issues;* altogether void of meaning, but by reference to demands, grounds of demand, defences and grounds of defence, never indicated: expressions imperfectly and discordantly understood by lawyers themselves, rendered completely and manifestly unintelligible to everybody else. Under favour of the mendacity-licence, the instruments so contrived, as to give little or no information, or worse than none: principal ingredients, falsehood, nonsense, and surplusage.

In default of the information, which the plaintiff's declaration and the defendant's plea

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the *substantive* branch of the body of the law, by which such effects are given to such events and situations as above: the substantive branch of the body of the law being so organized, as to qualify it for being made the subject of such reference.—*N. B.* Reference thus made to the tenor of the law, supposes the rule of action to exist in the shape of *real*, not of *sham* law.

12. Means of securing *forthcomingness*, on the part of *persons* and *things*, for legal purposes, provided on an uniform and comprehensive plan, adapted to the advances made by the age and country in the arts of life: of *persons*, whether in the character of parties or witnesses: of *things*, whether in the character of subjects of property, and as such portions of the *matter of satisfaction*, as for injury, &c. or *sources of evidence*: with diversities, adapted to the condition of the person, the nature of the thing, the purposes for which, in each instance, the forthcomingness is requisite.

13. The parties once met in the face of the judge, a *plan of intercourse* settled between them, to continue so long as the suit continues:—the intercourse to be carried on, in the promptest, least expensive, and most certain mode, that the state of society at the time affords: the arrangements of the *letter-post* accordingly adapted to judicial, as already they are so conveniently adapted to commercial purposes.

In regard to *notice*, sole question, *received or not received?* If not received, the failure, is it the result of pure misfortune, or of blame? If of blame, on the part of whom?—of him *from* whom, or of him *through* whom, it should have been received?

14. Neither *time* nor *place* exempt from the remedial power of justice:—exemption none, on any other ground than this; viz. that, in the individual case in question, the *vexation*, necessary to secure forthcomingness, would be an evil, preponderant over the evil attached to the *failure of justice*.

15. No *incidental application* to the judge, but by the party himself on whose behalf it is made:—the testimony on which it is grounded, being delivered, as in other cases, *vivâ voce*, to the judge, or in the form of *affidavit* evidence: but in this form, only where the ground of the application comes within some case in frequent occurrence, and as such provided for by printed forms:—the affidavit-maker (deponent) remaining subject to examination in the *vivâ voce* mode, with or without the previous intervention of the *epistolary* mode (as per article 3.) The demand for in-

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thus profess and fail to give, a supplemental set of *pleadings*, invented within the last half-century, and employed, though not to an extent equal to that of the deficiency, under the name of *particulars*:—adding of course to delay, and profit-yielding expense.

12. Means of securing *forthcomingness*, subject to endless diversifications, drawn from the style and title of the court, and other irrelevant sources:—in detail, frequently oppressive; in the aggregate, scanty and inadequate:—forthcomingness of written evidence, for example, vainly aimed at, through a course of months or years (as by a suit in equity,) when it might be effectually secured in as many hours, by a warrant from a justice of the peace.

13. Chicaneries about *notice*.—In regard to notice, two objects:—viz. that he who should have received it, may not receive it, and thereupon suffer as if he had received it: and that, when conveyed and received, he who conveyed it may suffer as if he had not conveyed it. Ineffectual modes of conveying notice prescribed in the first instance, that business may be made by application for effectual ones. Modes of conveying, or pretending to convey notice, diversified *ad infinitum*, mostly on irrelevant grounds, such as the style and title of the court, and so forth. Question, not whether *received or not*, but whether *good* or *bad*:—not the less good for *not* having been received; not the less *bad* for *having* been received.

14. *Asylums*, *local* and *chronological*; with diversifications, grounded on the diversity of *courts* and other irrelevant circumstances:—the power of securing obedience to justice, confined in this case to the *day*-time; extended in that case to the *night*-time: confined in this case to *week-days*; extended in that case to *sundays*: one part of the empire rendered a place of security and triumph, to the delinquents of another.

15. *Motion business*;—all *made-business*:—business made by and for *Judge and Co.*, by the exclusion of parties from the presence of the judge.

Money received for motions *of course*, so much money received *on false pretences*.

Occasions for motions *not of course*, made by defaults, real or pretended, the result of the *blind fixation of times*, seconded by the principle of *nullification*.

Motions not of course, always grounded on testimony, delivered in no other than the *affidavit* shape, and when opposed, and with

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cidental applications, being mostly factitious, fabricated under the technical system, by *blind fixation of days*, and so forth, will mostly be anticipated, by the explanations, produced of course, by the initial meeting *coram judice*.

16. *Language* of the instruments as familiar as possible: composed, as far as possible, of words in ordinary use: terms not in ordinary use, employed as sparingly as possible, and then never without explanations composed of terms in ordinary use.

17. *Truth*, unremittingly and exclusively sought for: — truth, the whole truth, and nothing but the truth. Falsehood, from no person, on no occasion, wilfully endured, much less uttered, by the judge.

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counter-evidence, opposed by evidence in that same and no other shape. Motion business, including incidental motions and motion causes, almost peculiar to English practice.

16. Use of *jargon;* principle and practice of *jargonization*. Jargon, its *shapes:* — foreign language, obsolete language, technical language undefined, nonsense, fiction, ordinary language perverted: — its *uses*, to produce — 1. *On the part of the law*, uncertainty, uncognoscibility, matter of sham science; 2. *On the part of the non-lawyer*, conscious ignorance, thence consultation and advice *(opinion-trade,)* or misconception, thence misconduct, litigation, lawyers' assistance or vicarious service, with advice at every step; 3. *On the part of the legislator*, conscious ignorance or experienced misconception, thence disgust, or groundless awe, propensity to regard reform as hopeless, or undesirable; 4. In favour of the professional lawyer, monopoly of the faculty of succeeding to judicial offices: — as if a monopoly of the faculty of serving as boarding-schools to girls, were secured to brothels; or, of carrying on wholesale trade, to swindlers. — Analogy between jurisprudential and other jargons — astrology, palmistry, alchemy, thieves' cant, &c.

17. Use of *fictions;* in the character of grounds and reasons. Fiction (in law) a wilful falsehood, uttered by a judge, for the purpose of giving to injustice the colour of justice. *General* uses of fiction to the partnership, (whether the decision grounded on it be otherwise lawful or unlawful) its uses in the character of *jargon* (as per article 16,) and (by holding up the vice of mendacity in an honourable light, in the character of a necessary instrument of justice) its efficacy, in the way of *example*, in corrupting the morals and understanding of the people. *Special* uses, the particular advantage, compassed on each particular occasion, by the injustice of which it is made the instrument. — *Ex. gr.* stealing conveyancing business, as, under English law, in the case of *common recoveries;* stealing jurisdiction, as in the case of the battle royal among the Westminster-Hall courts. English judicature polluted with this vice; to a degree altogether without example in the judicature of Scotland, or any other country upon earth.

18. Magnification of *jurisprudential law*, the work of judges, pursuing the partnership interest: — this imaginary law, represented as entitled to more respect than real law, the work of the legitimate legislator, pursuing, after appropriate and comprehensive inquiry, the interest of the people. Blackstone's attempt to pass off upon the people this sham law, as their work, sanctioned by their consent.

19. Contempt manifested, on all favourable

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occasions, towards real law: — sometimes by downright disobedience; sometimes by discourses, undervaluing it, and speaking of it as if less entitled to popular attachment and respect (as per article 18) than jurisprudential law.

20. *Double-fountain* principle; — a contrivance for exercising arbitrary power, by employing or rejecting, *ad libitum*, this or that one of the instruments of injustice above mentioned. *Ex. gr.* excluding the parties (as per article 1,) or admitting them: — receiving testimony in a bad shape (as per article 3,) or in a good one: — under the notion of *stare decisis*, applying the principle of nullification (as per article 9,) or, under the notion of liberality, refusing to apply it: — pursuing the *fiction* (as per article 17,) or refusing to pursue it: — in the case of an article of statute law habitually disobeyed, (as per procedure of the Scottish Court of Session *passim*) continuing or ceasing to disobey it.

Should the following sheets be found to present any claim to attention, it may perhaps be matter of convenience to your Lordship to see, at this early stage, and at one glance, the general result of the inquiry: — My Lord, it is this —

1. That, so far as concerns the *breaking down of the court into sections* (as per resolutions 1, 2, 3, 4,) the result, in respect of the ends of justice, and the interest of the people in the character of suitors, is all pure benefit: — but so is it to the law-partnership.

2. That what concerns the *mode of pleading* (as per resolution 5,) being nothing more than a repetition *in terminis* of what has been law these twenty years, as far as an act of the Court of Session could make it so, promises no better fruit; and that the profession, if they have not much to hope, have quite as little to apprehend from it.

3. That, in Scotland, of the proposed introduction of *jury trial in civil cases* (as per resolutions 6, 7, 8, 9,) the probable mischief, in the shape of increase of delay, vexation, and expense, seems greater than its probable good effect in the shape of a security against misdecision: that the proper stage for that species of judicature is that of *appeal*, after a *vivâ voce* explanation, upon oath, between the parties, and decision thereupon; and not after a series of written pleadings, not upon oath, in the first instance: always under the supposition—(learned lords and gentlemen — but, good my lord, do not join them — will smile at the simplicity of it) — that, on the demesne, hitherto, on account of the richness of the soil, reserved for the chace of lawyers' profit, the interest of the whole community may be thought fit to be cultivated, in preference to the interest of that small but domineering part of it, and the ends of justice pursued, in preference to the ends of judicature.

4. That the other arrangements proposed, apparently in the character of remedies against delay, vexation, and expense (as per resolutions 10, 11, 12, 13, 14, 15,) — viz. (*optional* substitution of appeals to advocations and suspensions, interposition of a Chamber of Review between the Court of Session and the Lords, prohibition of appeals against interlocutors, allowance of penal costs in the House of Lords, and retrenchment of superfluous judicial writings, — bid fairer, when taken together, for increasing than diminishing the aggregate mass of that fund of suitors' misery and lawyers' profit: and that the specific remedies, which could scarce have failed to present themselves to an experienced eye, have with congenial delicacy been put aside, in consideration of their too extensive and too drastic efficacy.

5. That of the system of disorder, to which the plan upon the carpet applies its powder of post, there is not any part that does not admit of a perfect cure: which cure consists in nothing more than an extended application of remedies that, as already submitted in the preceding pages, have over and over again received the sanction of the legislature: and that, in that part of the field of procedure, to which those efficient remedies have not yet been applied, there is nothing that can render them less applicable to it, than to those

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to which, with so complete though untrumpeted a success, they have been applied already.

Before I close this introductory letter, I will beg leave just to hint at a circumstance, which, to a statesman of your Lordship's discernment and experience, cannot, I think, but have suggested a suspicion at least, not unfavourable to the conceptions above submitted. Among so large an assemblage of acute and vigilant minds, whose interests are so materially concerned, your Lordship has received marks of satisfaction from many — of dissatisfaction, I believe, from none. Now, that Titius or Sempronius should originate, or even, without the merit of origination, support a measure, by which, to a limited amount, his own interest, in the gross sense of the word *interest*, would be prejudiced, is by no means without example: and that persons of this generous frame of mind are even now to be found at no great distance from your Lordship, the present parliament has already testified. But that any *body* of men, especially so large and domineering a body, should, without the pressure of necessity, manifest either active approbation, or so much as anything like patient acquiescence, under any measure, which by such acceptance would be converted into a *self-denying ordinance*, is, I am inclined to think, absolutely without example, certainly out of the ordinary course of human nature. Yet the plan has been in their hands these six months, and such is the countenance generally, if not universally, turned to it by learned gentlemen: they admire, though as yet in the air, the beauties of this New Jerusalem: they congratulate one another, and even in print, on the fresh prospects opened to them: and, under these circumstances, no wonder that the spirit of the union, that younger brother to the *original contract*, remains still inviolate. But, should any plan present itself, pursuing, upon the only terms on which, to any considerable extent, it could be pursued, the interest of the whole community — I mean, at the expense of this predatory part of it — no sooner would any such plan excite an apprehension of its acceptance, than the union would be no less in danger than the church at one time used to be. Such is the discovery a man might venture to predict without the gift of prophecy: and that without any other reserve than this, viz. that as there are some predictions which by invitation will sometimes produce, so there are others which by shame will sometimes prevent, their own accomplishment.

To place their system under the protection, and the country beyond redemption, under the tyranny of dead men, legislating on a state of things, of which no conception had ever presented itself to their minds, is among the standing resources of all those intestine tormentors of the body politic, whose prosperity depends upon the preservation of abuse, in all or any of its forms, against the attacks of the probe, or the incision-knife, in the reforming hand.

Would your Lordship wish to see, and in a still clearer and stronger point of view, the signification and value of this *quietism*? Compare it, my Lord—contrast it with the sort of countenance shown to the act (4 G. II. c. 26) for consigning to the language of the people the tenor and history of those proceedings by which their lives and fortunes are disposed of. My Lord, the opposition it underwent from learned lords and gentlemen, — underwent in both houses, was *unanimous*. So, at least, Chandler in his account of the debates assures us: Chandler *in terminis*; and with Timberland for his support.

By the English patricians of those days, the same sense of injury was felt, as was felt at Rome by the learned lords and gentlemen of that time, when the book of procedure, so religiously kept under lock and key, was stolen and published by the arch-thief Flavius,* in such sort as forced them to compose another, placing it under better guard: in the one case, the rule of action was locked up bodily in a box, in the other, it was locked up spiritually in a dead language: — the same sense of injury, that is felt by the same learned persons, and as constantly, howsoever covertly, testified, by some of them, as often as, by a wicked and jury-less court of conscience act, the possibility of obtaining justice in certain cases has been extended to this or that other minute portion of the people: — the same sense of injury, in a word, as was felt by the shark, who carried off one of Sir Brook Watson's legs, at the thoughts of being obliged to leave the other in its place. A shark is still a shark, in Britain as at Rome, after the Christian æra as before. The ocean breeds them with triple rows of teeth; the technical system with teeth not less sharp, and bushy manes like sea-lions. My Lord, when a shark is seen wagging his tail in the wake of a ship, it is a sign (so the sailors say) that there is prey in preparation for him in the belly of it.

By means of the above *key*, compressed and imperfect as it is, should the execution have fulfilled in any degree the wishes and humble endeavours of the workman, your Lordship may perhaps find it rather easier than at first, to come at the real tendency and probable effects, of the plan already put into your hands by the learned reformer: such at least is the object of the attempt I am thus making upon your Lordship's time.

In the sequel of these pages I propose to

* Liv. Dec. 1. lib. 9.— Plin. Nat. Hist. lib. 3.

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myself, in the distribution of the parts, to pursue the following order:—

Part I. The proposed plan, as delineated in the resolutions, examined, — *i. e.* confronted with the ends of justice. Title used for shortness, *Proposita.*

Part II. Indication of a few of the most prominent *abuses*, and other *imperfections*, observed on the face of the *existing* system; being such as appeared capable of being remedied without any material change in its technical character, but are not noticed in the *resolutions* — *Omissa.*

Part III. Outline of a different plan of reform, grounded on the *natural* system: followed by observations, designed to operate in support of it, and an indication of certain *auxiliary measures*, designed principally to promote the efficiency of the natural system, as above applied, but not altogether inapplicable to the existing system, in its present technical state. Title, used for shortness, and for the mere purpose of reference, casting itself upon your Lordship's indulgence, for its unintentionally dictatorial garb, *Facienda.**

LETTER II.

PROPOSED DIVISION OF THE COURT OF SESSION.

THE explanations in my former letter being premised, I proceed to submit to your Lordship in detail my remarks on the plan, as delineated in the seventeen resolutions passed in the House of Lords.

In the present letter, I propose to consider in one group, the four first, the *subject* of which is the division of the one existing Court of Session into several courts—and the *object*, the providing at any rate a remedy against *delay;* and perhaps an additional remedy against *misdecision*, in so far as these mischiefs may respectively have the multiplicity of judges for their cause. I repeat the resolutions here, to save the trouble of reference:—

"RESOLVED, — 1. That it appears to this committee, that the increase of manufactures, extension of trade, improvements of agriculture, and consequent multiplication of transactions, have varied the nature, and greatly increased the number of suits brought before the courts of law in Scotland, and thence by appeal into this house;

"And that it has therefore become necessary that some alterations should be made in the establishment of the courts of law in that part of the united kingdom, adhering as much as possible to the forms and principles of the laws of Scotland, and maintaining invariably the true meaning and spirit of the articles of union.

"2. That it will greatly conduce to the better administration of justice in the Court of Session, and will be for the evident utility of Scotland, that the said court, instead of sitting in one collective body of fifteen judges, shall sit in such number of separate chambers as may be found most convenient; and that the Lords sitting in such chambers respectively, shall exercise the same functions, and shall enjoy the same authority and privileges, as are now exercised and enjoyed by the whole Lords sitting together.

"3. That in each of the said chambers, one of the judges belonging to such chambers shall preside, such presiding judge to be appointed by his Majesty to the said office, during good behaviour.

"4. That causes coming in the first instance into court as Inner-house causes, may be brought before any one of the chambers, at the choice of the party instituting the suit; and that causes coming into the Outer-house, before any one of the Ordinary Lords of Session, and there decided, may be removed by reclaiming petition, or otherwise, into that chamber only of which such Lord Ordinary shall be a member."

Substance of the proposed arrangements as follows:—The existing court divided into *several chambers*, number not yet fixed, each possessing the authority of the whole;—*president* in each, not removable at pleasure;—*plaintiff to choose* his chamber.

So far, so good, my Lord. — Reasons uncontrovertible—

1. *Benefit of dispatch*—Degree of dispatch increasing in certain respects with the number of the chambers.

In how many different ways delay increases with the number of judges — at least when they are understood to lie all under an equal obligation to take an efficient part — (for your Lordships, with respect be it spoken, know how to make these things easy to you) it were almost superfluous to inquire.

Time for settling the opinion of each — thence of the slowest and most accomplished in the science of dubitation: for in a court, as in a convoy, the pace of the whole is regulated by that of the slowest vessel. Think of ———, my Lord: and if the whole world could furnish them, conceive fifteen ——s. Decorum forbids, notoriety renders unnecessary, the filling up of these blanks. — Time spent in discussions — in bolting out misconceptions, and clearing them up, not to speak of wanderings, and in supporting opposite opinions. This, even where everything is purity, and *bona fides*. But should a *malâ fide* suitor have need of delay, and a single judge out of the fifteen be disposed to give it him, then what end of doubts and misgivings, and new

* The design seems not to have been followed out farther than to the extent of exhausting Part I. *Vide* Letter V. p. 47. — *Ed.*

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points started, and adjournments? But, my Lord, I am trespassing all this while upon your Lordship's time, and, like the fat man in the crowd, constituting the very nuisance I am denouncing. — I conclude. Benefit of dispatch produced: — *Ends of justice* served, the *collateral* ends — prevention of superfluous delay, vexation and expense.

2. *Benefit of economy:* — saving of delay and expense, by expense of printing struck off: — viz. printing *pleadings:* for, to the abuse made in this way in England and elsewhere of the art of writing, in Scotland they have found means to add the abuse of printing. Yes, law-presses broken up: at least if the number of chambers (as your Lordship has been stated as inclining to propose) be as great as *three*. Three chambers give five judges to a chamber: only one more than in our Westminster-Hall common law courts at present; not one more than we had in them in former times: no printing of pleadings in England, nor the want of it ever felt or imagined.

But, my Lord, I am running wild again, and outstripping your learned Reformer in the career of reformation. For, upon looking once more, I find this economy is my own imagination all the while, not his proposition. The printing trade he has indeed noticed, but for what purpose? — for the purpose of encouraging it, not cramping it. For in resolution the 12th, for the use of the proposed new court of appeal at Edinburgh, printing is enacted: nowhere is it repealed.

8. *Benefit of competition:* viz. as between chamber and chamber, among all these chambers. Ends of justice served, all together, collateral and direct. Saving of delay, vexation, and expense; security against misdecision likewise. — Oh my Lord! how straight and how pleasant, when once a man has learnt to travel in them, are the ways of justice!

On the field here in question, in the benefit of competition, my eyes, weak as they are, have served me for distinguishing two branches. One consists in the multiplication of the shops, and the choice given to the customer, that is, to the plaintiff, as between shop and shop: the plaintiff, if he is *bona fide* — if his wishes are honest, as, in the ordinary state of things those of the plaintiff are, for his own sake picking out the best. So far as this branch of the benefit is concerned, to be satisfied of the reality, and at the same time to understand the value of it, I see no need to look further, my Lord, than to Cocker's Arithmetic.

The other branch of the benefit consists in the influence of this multiplicity on the disposition and conduct of the dealers. In ordinary trades — in trades not subject to a monopoly, the nature and efficacy of this branch likewise is clear enough. But in the very particular sort of trade here in question, the great law-partnership — the competition so nearly resembling that between the two shops kept by the same cabinetmaker, one in the city, the other in Bond-street — the process for extracting the true value of this branch of the benefit does not appear quite so simple. In some instances, indeed, I think I see a *positive* value. But in others, if my calculation be correct, the value of it is what the value of x is so apt to be, *negative*. Think, my Lord, of the competition between B. R. and C. B. and the fruit of it — imprisonment for debt on mesne process; upon the mechanical principle above explained, the judge taking care to see neither party, and to know nothing about the matter, for fear of being obliged to stop a man in his way to jail, and so losing his profit upon the jail, besides so much time, and so many other of his fees.

On this part of the problem, therefore, the calculation being somewhat intricate, and running up into the higher algebra, I will not attempt to trespass on the time of Cæsar with so long a sermon. Agreed about the measure, I see no practical use in rummaging among the reasons for points of difference. But, should any occasion present itself, in which the benefit looked for from this source should be proposed, in opposition, and in the character of a substitute, to any arrangement, promising benefits, to my view of a less equivocal and more substantial texture, then would be the time for weighing the value of this part of the acknowledged benefit in diamond scales. Such as they are, I have a pair for the purpose, and they are at your Lordship's command at any time.

But, my Lord, as in some companies the more the merrier, so in all competitions, the more the brisker. Setting down this benefit at whatever it may be worth, this and the first together (I mean *dispatch*,) from *three*, do they not bring us on to *fifteen*?

But at number 15, or before, if any inequality of numbers be admitted, comes *single-seated judicature*, and with it a new, and in my view, in comparison of either, I must confess, a still more important benefit; viz. *individual responsibility*.

A *board*, my Lord, is a *screen*. The lustre of good desert is obscured by it; ill-desert, slinking behind, eludes the eye of censure: wrong is covered by it with a presumption of right, stronger and stronger in proportion to the number of the folds: and, each member having his circle of partial friends, wrong, in proportion again to the number, multiplies its protectors.

Of the several branches of the public service, I would not positively undertake to say that judicature is, without exception, the one in which the advantages of individual responsibility operate in the strongest force: but

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where this force is at its least dimension, it can never be too inconsiderable for regard.

Other departments, for aught I know, there may be—the treasury, for example—in which, emulation finding no place, and the scene lying necessarily in a closet, board management may upon the whole be preferable. In Lord Coke's time, the treasure being in a single hand, and that armed with a staff, Lord Coke finds a use for the staff: and says it is for keeping off sturdy beggars. But, under the softer manners of modern times, the screen may be found, for aught I know, (but your lordship knows exactly) the more convenient implement. Imagine a commander-in-chief stalking in to the treasury, in full *costume* — coat of mail and helmet — crying out, *Your money, or your place!* Coming to close quarters, a Lord Treasurer might find the staff break, sooner than the helmet: — but the screen might have its uses. — But, my Lord, what has all this to do with law and justice?

"Oh but, sir, this is all theory."— Well then, my Lord, let us refer the matter to experience.

In Westminster Hall, two courts of Equity: —one, the Exchequer, with four judges in it: the other the Chancery, with but one. Thus to outside appearance; but in fact the Chancery includes two courts: sometimes both on a level, sometimes one above the other: *as the plaintiff's attorney thinks fit to place them:* in the one the Chancellor: in the other the Master of the Rolls. Now should this, my Lord—should it, in your Lordship's opinion, be among the "secrets worth knowing?" Call (for your Lordship has power) call for the number of suits instituted in a year in each of the three respective courts. Mean time, one thing I can take upon me to certify to your Lordship — I who have no power — viz. that, of the two single-seated courts, the one which has fewest causes, has more by a great many — and not only now has, but always had — (and I speak of those suits alone, in relation to which the competence stands on an equal footing) more, by a great many, than the many-seated court.

In the English court of Chancery, the authority has from time to time been vested in *three* judges, under the name of *Commissioners* of the Great Seal. But, so often as this treble-seated tribunal has been set up, so often has it been recognised as no better than a makeshift; and still the many-seated has given place to single-seated judicature.

So miscellaneous are the functions of the Lord Chancellor, that, to the maintaining of this constant recurrence to simplicity, other considerations may have lent their influence, besides that of its subserviency to the ends of justice. But from this surmise of other possible concurrent causes, no clear inference can be deduced: the effect, for which the advantage in respect of judicature is of itself capable of accounting, remains certain: and thus much may at any rate be inferred, that, from this so-often-repeated experiment, no indications were ever afforded, sufficient to produce a tendency anywhere to call, in that instance, for the permanent substitution of treble-seated, or in any other degree many-seated, to single-seated judicature. Of any such tendency, I, for my own part at least, never met with any trace.

But, without crossing the Tweed, the home-bought stock of experience might, in Scotland, one should have thought, have afforded indications sufficiently conclusive in favour of the proposition, that no superior prospect of advantage to justice is held out by many-seated, in comparison of single-seated judicature.

Eight-and-twenty sheriff's courts, next in authority to the Court of Session, and in the aggregate covering the whole extent of the kingdom, all single-seated courts. Even in the Court of Session itself, everything, without any limitation worth adverting to, comes in the first instance under single-seated judicature: and what advantage has been derived, or so much as been thought to be derived, from the transference to many-seated judicature, let experience testify. On this head, whatever has been done, has been done in the way of reduction: — I speak of the riddance made of the Lords Extraordinary in George the First's time.

In Edinburgh itself, close under the eye of the same public that calls so loudly for the decomposition of the many-seated court, there exists one of these single-seated sheriff's courts. No call has ever been made for the substitution of complication to simplicity in this instance: and how should this be, if any inconvenience were felt for want of it.

Ever since the Union, indeed—almost these hundred years—Scotland, as well as England, has had a court of Exchequer; in England, a four-seated court; in Scotland a five-seated: *—and of this experiment, too, as far as it goes, the result is in favour of simplicity. Compared with the fifteen-seated court, general suffrage appears to be in its favour: for no complaints against it have ever been heard, and now a slice of jurisdiction (I mean that which regards the *teinds*, Anglicè *tithes*) is proposed to be cut off from the many-seated court, and given to the few-seated one. Many-seated, to be sure, it is, in comparison of the single-seated courts.

* By 2 & 3 Will. IV. c. 54 (23d June 1832,) the court of Exchequer in Scotland was prospectively abolished; the duties, on the death or resignation of any of the judges, being appointed to be performed by those remaining, and after the death or resignation of the last remaining judge, by a judge of the Court of Session.—*Ed.*

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But this proves nothing against simplicity: for in Scotch Exchequer judicature, there has been no single-seated court to try against the many-seated one, as there has been, and is, in English equity.

There are indeed the fourteen single-seated courts, with a Lord Ordinary in each: but such is the mode of being of these courts—sometimes detached from the fifteen-seated court, sometimes absorbed into it—that the distinctness necessary for comparison is not there to be found.

Out of five causes brought before the Lord Ordinary, he does not, it is said, pronounce a decision on more than one: the four others being, for mere want of time, handed up by him to the Inner House, before any considerable portion of his labour has been expended upon them.

At its institution, anno 1532, why was the court so crowded as we see it? Because France was the model for everything, and in France, judicature was thus crowded. In France, how came judicature to be thus crowded? Because the sale of the seats was an object of finance. From this sinister interest came the custom: from the custom, the prejudice: and that prejudice so strong, that it became a sort of axiom — that if in any instance the ends of judicature failed of being fulfilled, it was for want of a sufficiently great multitude of judges. We have a book, my Lord, on this subject, by *Condorcet:* a quarto volume with 460 well-filled pages in it: all algebra, all demonstration; and this axiom (preface, p. 24) a basis of it.

Sieyes, in one of his plans, improved upon this: and, to combine learning with popularity, and compose a substitute for reason out of two blind prejudices, he set up in every little town, down to I forget what degree of minuteness, a jury-box stuffed with lawyers: but, to feed this receptacle, and keep it constantly filled, after the requisite allowance for rotations, and radiations, and challenges, the quantity of learning (not to speak of probity) with which he proposed to enrich the territory of the republic, and by what means the learning itself was to find the necessary *pabulum*, must be left for imagination to conceive.

Now then, my Lord, supposing that, by the evidence of experience, or, in a word, by evidence of all sorts put together, single-seated judicature were proved to stand no higher than upon a par with many-seated judicature, would not its title to preference be complete? "*Il ne faut pas multiplier les êtres sans nécessité*," says a good French proverb: Is not this, my Lord, among the cases that fall within it?

If, in such a multitude of shops, there should chance to be here and there one that should find itself without customers, even in this case there would be no harm done. The judge whose learned leisure remained thus undisturbed, would be virtually in the condition of one to whom his salary is continued in the character of a pension of retreat:—and to form an anomaly, not altogether devoid of curiosity, in the natural history of pensions, here would be so many of these articles of expenditure, the propriety of which would find itself attested by universal suffrage.

Another thing:—Two additional many-seated courts require each a president: and the Scotch as well as English of *president* is, if my dictionary inform me right, additional salary. This additional salary, your Lordship, in your quality of presiding guardian of the public purse, would find a delight in saving: besides the correspondent burthen of patronage, which, by right honourable persons in your Lordship's high and highly responsible station, has always been felt to gravitate with so severe a pressure. But a single judge would no more admit a president, than, after a critical examination, the largest elephant in the world was found to admit of either a superior, or a rival, in himself.

I dwell on this topic the more distinctly, because in the succedaneous or supplemental plan, which I propose to myself the honour of submitting to your Lordship among my *Facienda*, additional salaries are so unhappily and inevitably abundant: I mean for the existing local judges, to draw them off from the service of the technical Mammon, and purchase the whole of their time, for the service and benefit of justice: provincial judges, obscure but useful drudges—28 (if I do not miscount) in number—who, from so high an observatory as your Lordship's, being too far distant to be viewed without a telescope, such as your Lordship's learned assistant has not presented you with, found no one to endeavour to bring them under your Lordship's notice, but a drudge still obscurer than themselves.

But to return from this digression. If England be so fit a model for Scotland, in respect of multiplication of juries, why not in respect of reduction of judges, and reduction, or rather avoidance of increase, of salaries?

The argument might be pushed further, by observing, that in the many-seated courts, almost the whole of the efficient and honest part of the business—I mean the conduct of the *trial*—is performed by single judges;—that, of the business done in full court, by far the greater part is *made business*, business that, had the ends of justice been the ends of judicature, would never have come to be done: and that, out of every three of the four judges, the best that can at any time be said, and more than can at all times be said, is—that they do no harm.

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Take a man of commanding eloquence and character (such, for instance, as *Lord Mansfield* was); give him conceits (such as Lord Mansfield was said to have had) of putting himself in the place of King, Lords, and Commons, and then see whether there may not be a convenience to such a chief, in having for his supporters a train of ever-obsequious puisne judges. Then comes Sir James Burrow's triumphant unanimity, — an unanimity not so flagitious indeed, but in other respects not much dissimilar, to the unanimity so regularly, and with so little expense, in addition to that of perjury, produced by torture, among juries.

To speak plainly, my Lord, I really see but two reasons, if reasons they are to be called, for the putting of so many judges in each chamber:—one is, that there is a stock of learned materials that somehow or other must be disposed of: the other is, that here are so many situations, which may be continued without complaint, because they exist already, and which it would be so delightful for a multitude of learned persons to look up to, and for some one learned person to have, as at present, the disposal of.

As to the first reason, I feel what is due to public decorum, combined with individual sensibilities. But, amidst such a number of persons at such a time of life, if there are not already, in the nature of things there cannot but soon be several, to whom repose would be more acceptable than labour, especially labour so unremitted as theirs is universally described to be: and, without insisting on their being *killed off*, at any rate the supernumeraries may be suffered to *die off*.

As to the other reason, unfortunately it is not the less persuasive, for being incapable of being avowed: and to this, I must confess, I have no better reply to make, than what is contained in that project of my own, for improving the condition, and increasing the dignity and utility, of the provincial *Sheriff's Courts*.

If what has been said in behalf of individual responsibility and single-seated judicature, should not yet be found conclusive, materials are not wanting for ulterior and diversified appeals to experience; none of them without a precedent already in existence—all of them without addition to expense.

1. In one court, *five* learned lords, as in the existing court of Exchequer — the court which, in respect of the number of the seats, seems to have been taken as the model for the three proposed chambers.

2. In another court, *four* learned lords, as in each of the three common-law courts in Westminster Hall.

3. In another court — or, in one of the above, instead of the number above proposed, *two* learned lords, neither more nor less, as in the *Welsh courts*, each of them serving, upon occasion, to prevent the other from doing anything: a result that has now and then manifested itself in the other courts having seats, as above, in even numbers.

4. Moreover, if number *three* were regarded as possessing any properties peculiar to itself — number *three*, though unsanctioned by any particular precedent that I know of (unless the three seats occasionally substituted, in the character of a temporary makeshift, to the higher single seat in the court of Chancery, be considered in that light) might find its exemplification along with any two of the numbers already mentioned.

In each case, there would still be learned materials enough left for courts more than one, with single seats in them: and forasmuch as a course of experimental judicature is intended to be delivered, it were a pity that, if the joint evidence of theory and experience in favour of single-seated judicature be not accepted as conclusive, the experiment should not be diversified under as many forms as it is susceptible of.

Thinking *three* degrees of *jurisdiction*, whereof *two* of *appeal*, numerous enough;—sheriff's courts and others in the provincial towns, metropolitan courts in Edinburgh, with concurrent jurisdiction as proposed, and House of Lords in the imperial metropolis (one more than in ordinary cases we have in England) quite sufficient; — the existing *Inner House*, therefore, at the best a *superfluity*; which, *in degrees of jurisdiction*, each swarming with delays, vexations, and expenses, is as much as to say a *nuisance* — your Lordship sees already what my conceptions cannot but be, of the proposed 5th degree of jurisdiction — *the chamber of review*.

But of this in its place: after which, and after I have humbly represented to your Lordship what *representations* are, I propose to myself (I believe it will be in the *Omissa*) to submit to your Lordship by how many points the existing Inner House always has been, and, in whatever number of chambers it were to come to be divided, still would be worse than useless.

Meantime, at the bare idea of such a dissolution, I see their whole Lordships up in arms. Actually existing Inner House, three projected Inner Houses — all vanished! No houses left but Out-houses! — each learned lord reduced to the condition of a mere Lord Ordinary! the Lord President left with nobody to preside over but himself! the two *bonuses*, the use and function of which was, to produce, on the part of the two leaders among their learned lordships, a conviction of the utility of the plan, an utility so transcendent as to outweigh even the mischief of innovation — these two all-composing anodynes both gone!

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So redundant is the population of the Inner House found to be, when once any principle of reason or experience comes to be applied to it — so large the proportion of the mass that runs into *scoriæ*, when once put into this test — so raging the disease, so urgent the pressure, that even Mr. Malthus, with his inflexibility, and his bitter remedy, might find himself at a loss to cope with it. Submitting mine, I submit it rather for illustration, than for any serious hope of seeing it carried into practice. To give reception to it, the interest of suitors would be to be preferred to the *amour propre* of so many judges: the whole interest of 1,500,000 unlearned, to that delicate and tender part of the interest of fifteen pre-eminently learned persons: the ends of justice to the ends of judicature: — and, in Scotland in particular, not to speak of other countries, was ever any such preference, to any extent worth speaking of, so completely without a precedent?

As to the persuading a learned lord to sit in a court in which he would be sole judge, instead of sitting in a court of no wider nor higher an extent of jurisdiction, in which he would be but one out of five, it is not there, if that were all, that I should be apprehensive of much difficulty.

The misfortune is, that of the jurisdiction at present exercised by the Court of Session, a great part, and, if I apprehend it right, by far the greatest, is jurisdiction *in the first instance;* so small being the proportion of the number of causes that receive a decision from the Lords Ordinary: and the business of the Bill-Chamber, it is to be hoped, not being sufficient, when added, to place the majority on that side.

At present, the population of this upper story of the College of Justice, with the exception of the Lord President, standing, the whole of it, upon one level, here would be a necessity for disturbing the equilibrium, and fixing it on two different levels, dividing it between an *upper* and an *under school:* and here it is not, as in the case of the two additional proposed chambers, in which two learned persons are to gain, each a *remove*, their *fellows* remaining as they were; but a sort of turning down or degradation would be to be effected, of those who at present do *upper* as well as *under-school exercise*, some being abased, and confined to under-school exercise alone, seeing their fellows at the same time exalted, and set for ever above such inferior exercise.

Here, then, would be the rub. In some schools, where a pill of the bitter kind has been to be swallowed, lots have been cast to know to what part out of the whole number it shall be administered. But that has been *propter delictum;* which takes it out of the present case, and unfits it for a precedent.

In our spiritual courts, the same learned person is found, I have heard it remarked, to act alternately the part of judge and advocate, coming upon the theatre of justice sometimes in the one character, sometimes in the other, with the most amiable condescension, and with that facility and promptitude which is acquired by practice. But that, on that or any other theatre of justice, any such custom has ever prevailed, as that of a judge *ad quem* descending and coming on in the character of a judge *à quo*, is more than I recollect an instance of: especially where the descent has not been occasional, alternating with reascent, but permanent and definitive.

The misfortune is — it is impossible to disguise it — that, not only on the existing plan, but on my plan, jurisdiction in the first instance is *sheriff-depute's* [substitute's] work; and, while any one of their lordships had *appellate-jurisdiction* work to do, and that alone, to expect that any other of their equally learned lordships should set his hand to sheriff-depute's [substitute's] work, would be an expectation about as extravagant, as that the housekeeper of any of their lordships should set her hand to kitchen-maid's work, and undertake to wash the dishes.

In the *military* department, indeed, how often have we not seen, in histories at least, one general serving as volunteer under another, a senior even under a junior? But how different — how opposite, or rather disparate, in every point — are the two lines of service! In the one, a man hazarding his own life, to save life and everything to his fellow-subjects: in the other, sitting upon a cushion to dispose of theirs; not forgetting to secure a few pickings out of their fortunes to his own use. Honour the endowment of the soldier, learning that of the man of law. Are south and north more opposite than honour and law-learning — *law-learning*, with *falsehood* for the basis of it?

This, then, being hopeless — and whatever else may savour of self-denial, or sacrifice of personal profit or vulgar pride, to public good, or to more refined and sublimated pride, from members of a body so placed, and so habituated, alike hopeless — (your Lordship will comprehend without difficulty with how much greater satisfaction I should see any such conception confuted than confirmed) — it remains, that, for doing sheriff's work, we should be reduced to men as yet unlorded, to men upon no higher a level than that of sheriffs-depute [substitute.]

Yet a time there was — and that at no great distance — at which a Curtius of this stamp might not improbably have been to be found. There lived an honest man once, even among their learned lordships, whom they called Swinton — Lord Swinton — the same whom, on a pilgrimage made by him to Eng-

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land — like that of Herodotus to Egypt, or the fabled one of Anacharsis to Greece — to England, as to the seat of more antique and mysterious learning, Judge Buller, perceiving in the man a sort of an *excrescence* like your *love of justice*, and looking upon him for it as an oddity, a species of Howard, like a man with two thumbs, or a calf with five legs, took upon himself to quizz: telling of him a good story, which I choose rather to leave for a *Bulleriana*, or *King's-Benchiana*, than to entertain your Lordship with it.

In this man, judging of him from his pamphlet, which perhaps your Lordship may have seen, and which is all I have to judge him from, except the *small-debt act*, for which, if it be his, as it is said to be, thousands and tens of thousands, born and unborn, are bound to bless his name — in this man I should have expected to find a sort of *Scrub*, a judge-of-all-work, ready to serve justice in any capacity in which he could be made useful to her; and (like another honest man far beneath him, whom, for different odd jobs, I may, in the course of these letters, have occasion to present to your Lordship's notice) without scratching his head for something to drink, or calling for increase of wages.

Not but that — could the plan of so unqualified a reformer, as he who thus presumes to obtrude himself upon your Lordship's notice, present any title to acceptance — work, and that of a kind not to be disdained by any hand, would be to be found, for one at least of these indubitably learned, and supposed superfluous distributors of justice: work, in its nature somewhat different from their present occupation, but in dignity not inferior, and with an appropriate title. I mean that of *inspector-general* — say, *lord inspector — of Scotch law:* but of him and his functions, in my short list of *facienda*.

Moreover, if another of them would condescend to take *English*, and another again *Irish* judicature under his care, they would neither of them, I would venture to say, find in either field any want of matter meet for observation.

I have already ventured to confess to your Lordship, that, under the existing *fee-gathering* system, my expectations from the benefit of competition, so far as concerns one branch of that benefit, are far from sanguine. But, my Lord, since upon my plan we have so many pre-eminently learned persons, each of himself a court, and in the habit of being one, upon our hands, I will venture so much further as to submit to your Lordship one experiment, which, although there could be no sort of competition in it, would be but the more instructive. And, in proposing the experiment, so bold am I for this once, that without any sort of pretension to the gift of prophecy, I will moreover venture to predict the result.

Let any number of courts be set to proceed in the way of *natural* procedure. Let any other number (for shortness, let us speak as if in each case there were but one) be left to proceed in the way of *technical* procedure, according to the existing practice.

Such being the experiment, now as to the result. The result will be, my Lord, a separation of plaintiffs into two groupes —

Bonâ fide plaintiffs — every one of them, without exception, will go to the *court of natural procedure*.

Malâ fide plaintiffs — every one of them, without exception, will go to the *court of technical procedure*.

Every one of them — that is, if there be any: — if, with his motives upon his forehead, any lawyer — advocate, writer to the signet, agent — whatever be his nature, or his name — should be to be found, hardy enough to lend himself to a procedure, of which, where there is any other to be had, the oppression of the defendant will be the sole object, as well as manifest result.

To the court of natural procedure will betake himself every man who, wishing to have his due with as little delay, vexation, and expense as possible, is content, for the benefit of seeing the obligation of veracity imposed upon his adversary, to face him before the judge, and take that same obligation upon himself.

To the court of technical procedure will betake himself every man who, having a demand for the power of imposing upon his adversary a quantity of expense and vexation, and wanting delay as an instrument for letting in and laying on the vexation and expense — whether it be for the simple purpose of inflicting torment, or for the purpose of compelling, by the terrors of such torment, or the inability of enduring it longer, a surrender of the Naboth's vineyard, by which his concupiscence has been provoked; — having an effectual demand, I say, for this *jus nocendi*, and being content to torment himself for the advantage of applying corresponding torment to his adversary, goes of course to the only *officina justiciæ* where *jus nocendi* is to be sold.

As to the court of natural procedure, and the destiny that will await the causes introduced into it, I can venture to submit an estimate, not unworthy of your Lordship's notice.

A little less than *a third*, or some other such large proportion of the whole number of causes, will receive their decision on the first day, and *after one appearance* on both sides: — a little less than *another third*, on the next day, the defendant having made default the first; but still *with but one appearance* on each side, or with but one appearance, and that on the plaintiff's side: — a little less than the remaining *third*, still on the second

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day; though, in this case, by adjournment;—and thus *with two appearances* on each side.

I speak from a twenty years' experience, acquired in a *court of conscience*, of which in another place: and presently your Lordship shall see—if not an estimate, an expectation—from much higher, indeed from the very highest authority, and still more favourable.

Other suits there doubtless are, to the delay and expense of which, as resulting from some assignable cause or *causes of complication*, a *table* of which is hereto subjoined, even under natural procedure, no such limits as the above, nor even any determinate limits, can be assigned. But these would most assuredly not amount to a tenth part of the whole number of civil causes of all sorts, those included which cannot now come, as well as those which can and do come, under the jurisdiction of the *courts of conscience*, or say of the *small-debt courts*.

Among these suits, there are some in which the use of *writing*, in the first instance, will be necessitated by the circumstance of *distance*. But that the exercise of the *jus mentiendi* is not necessarily attached to that of the art of writing, is known even to English equity. For all these *extraordinary* cases (for such they are, in comparison of the bulk of causes that would come for justice, if it were to be had,) full provision is accordingly made in the plan, the outline of which will be submitted to your Lordship in the *Facienda*.

But here another difficulty presents itself. After travelling, and so much at their ease, and through the whole course of the learned part of their lives, in the road that leads to the ends of judicature, their Lordships would be apt to find themselves a little awkward, it may be feared, when set to travel in so new and strange a road, as that which leads by the shortest cut to the ends of justice.

My Lord, I feel the force of the difficulty; but nothing but absolute necessity shall make me regard it as insuperable.

Various expedients present themselves:—There are schools in which grown gentlemen may learn to dance: there are schools in which grown judges might learn to do justice.

Each learned lord has *servants:* most of their learned lordships have or have had *children:* to whom, in case of any little transgressions or disputes, such as will sometimes present themselves in all families—to whom, at any rate (I speak of the children,) if not to the servants, he will have been desirous to do, and will accordingly have done, justice.

Each learned lord, or at any rate almost every learned lord, has or has had a *lady*, whose learning, let us hope, if she has any, bears no resemblance to his own. If in that domestic tribunal he has not been in the habit of exercising the judicial office himself, or even if he has, let him put himself under her tuition for a while: behold in her *rules and orders* a set of *acts of sederunt*, to which I will not do any such injustice as not to suppose them better than his own, and read in her fair hands his improved *book of practice*.

Should that course of schooling, in the instance of this or that learned tyro, fail, or be found insufficient, let him follow the precedent, though not literally, set as above by the good Lord Swinton. Let him betake himself—not to a *jury-box*, as Lord Swinton did—he will not find there exactly what he stands in need of—but to the nearest Scotch small-debt court:—or if, looking upon a visit to any such neighbouring school, as a sort of remedy for his leprosy, too near akin to a dip in the river Jordan, he does not, any more than Lord Swinton, grudge crossing the Tweed, let him repair to *Birmingham*, and put himself under the tuition of Mr. Hutton, whose amusing as well as instructive account of the proceedings of the *court of conscience* there, as carried on under his presidence, is lying on the table before me; and who, if applied to by any man in that elevated station, will, I am certain, not refuse that information, which in my obscure and humble station he has granted to me.

But, not to impose on every one of their learned lordships the necessity of any of these wild pilgrimages, there exists (if on a hasty glance I comprehend this part of the *carte du pays* right)—there exists in that spacious mansion called the Outer House, including in itself so many mansions, one in which there sits a learned lord, called the *Lord Ordinary on Oaths and Witnesses*. On him is imposed, I see, on particular occasions, the degrading function of sitting to receive, in their own proper, or rather improper persons, the *canaille* of suitors.* There he finds himself now and then obliged—for I believe he finds it impossible to escape from them altogether—to hear them and examine them, and thus to get from them the truth, in its native crude and impure state, without having it refined, and double-refined, and treble-refined, by being percolated through the lips and pens of commissioners and commissioners' clerks, and agents, and writers to the signet, and advocates, and Court-of-Session clerks of so many sorts and sizes. In this *ergasterium*, if I understand the matter right, it falls to the lot of each of their lordships (the president excepted) in his turn to drudge. If, then, after drawing the truth, or whatever is given for truth, in this crude state, and from whatever sources it is to be had from, and that at the very outset of the cause, and from both parties at once, and without a syllable previously written by professional lawyers of either side, or at any other time, unless it be worth while, as the parties and witnesses, if

* Bell's Forms of Deeds, 1st Ed.; Ed. 1797, 1804; vi. 107.

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any, speak, to set down what they say,—if, with these little variations, he can prevail upon himself to decide upon the evidence at once, instead of setting it, or something that passes for it, to be committed to writing, to be decided upon by some other judge, who has heard nobody, seen nobody, and knows nothing about the matter, he will have judged, under the system of *natural procedure*, whether he knows it or not, as truly and scientifically as it ever happened to *Monsieur Jordan* to talk prose.

Can the utility or the practicability of the natural system admit of doubt? Let us call authority then to solve it, my Lord, and let us look up at once to the highest in this line:—

Even Mr. Hutchinson*—I should have said his right honourable corrector of the press—(p. xiv.)—the Lord President—speaking (p. 116) of the Scotch small-debt courts (courts of natural procedure,) admits, that the mode of procedure there pursued, parties present, no *mendacity-licence*, is "MOST EXCELLENT" (pp. 116, 120, 123, 125;) meaning for a debt of £5:—of course for a debt of £50, if incurred at ten different times. The same learned gentlemen are indeed equally clear, that the self-same mode of procedure, or at any rate that the self-same courts, are stark naught for a debt of £5: 1s.—"It is plain," say they, p. 129, "that in this country the sum could not at present, with propriety, be raised above £5 sterling."† Add a shilling to the £5, thereupon comes the necessity of a determination on the part of the judge never to set eyes on the parties, coupled with a determination to read or pretend to have read lawyers' scribble, heaped together in volumes, printed with the benefit of the mendacity-licence. As to the distinction itself, nothing can be clearer: but as to any ground for it, relation being had to the ends of justice, nothing of this sort is attempted to be given, nor ever will, the task being upon the face of it an impossible one.

In vain would it be to say, when you get above £5, *learning* is necessary, and learning is not to be found among non-lawyers, the noblemen and gentlemen, who sit and act as *justices of peace* in these small-debt courts. This being admitted—(not that the connexion between *height of value* and *demand for learning* has place in so many as a fifth part even of the causes *above* that value)—this however being admitted, still the ground would be never the stronger: draw the boundary line where you will, still it would remain to be proved, that while truth is sufficient to justice below the line, mendacity is necessary above it. The *mode of inquiry* pursued in the system of procedure, is one thing; the description of the *hands*, by or under which the inquiry is conducted, and justice or something that is called justice is administered under that system, is another. Whatsoever repugnancy learned minds may feel at the idea of pursuing, with truth before them, the only course leading to the discovery of it, the bar is of their own making: learned feet, could they be prevailed on, are no less capable of pursuing that track than unlearned ones.

So in regard to *space* and *time*. In the one case, there is a straight road of a mile long, and without a turnpike in it: in the other case, you may go to, or at least towards, the same place by a road of a hundred miles in length—full, accordingly, of turnings and windings—full, moreover, of quicksands and pit-falls, and equally full of turnpikes. In conducting the traveller, nothing obliges the conductors to avoid the straight road, and drag him along the crooked one: nor would they ever have given themselves any such trouble, had it not been for the turnpikes, the tolls of which are so regularly settled, and the tills in such good keeping:—learned feet, could they be prevailed on, are no less capable of treading the short road than unlearned ones.

As to our learned author, so long as the travellers are "*low people*," and unable to pay turnpikes, he is content that they shall be let into the one-mile road, where there are no turnpikes. But, as everything that begins must begin somewhere, his calculation is—that where the value of the article to be travelled in quest of, begins to rise above £5, there begins the influx of your respectable sort of people, who are able to pay the turnpikes. Then accordingly comes the time for shutting up the bowling-green one-mile road, which is without turnpikes, and opening the bone-setting or bone-breaking hundred-mile road, crowded all the way with turnpikes.

"It is not," says he, p. 137, "*without some very good reason assigned*, that the court is to be delayed from one day to another, but each day's roll ought to be determined, if possible, at one *sederunt*: as the loss of time, besides the injury to the community, is a very serious evil to persons in the *lower* ranks of life, *for whose benefit this act was principally intended*."

Every day, every mile, beyond the first, is grudged (your Lordship sees) by the humanity and justice of these learned gentlemen, where the persons *detained* are low people, *out of* whom nothing, or at least nothing worth stooping for, is to be got, and the persons *detaining*, are unlearned people, *by* whom nothing is ever got, and for whom nothing is intended. But no sooner do your respectable people come up—bang goes the gate of the

* Hatchinson's Justice of Peace, 1 Ed.; Ed. 1806.

† By 10 Geo. IV. c. 55 (repealed by 1 Victoria, c. 41, which consolidated the law on the subject,) jurisdiction was given to sheriffs to decide summarily in debts not exceeding £8: 6: 8, (viz. £100 Scots.)—*Ed.*

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one-mile road in their faces, and they find themselves thrust into the hundred-mile road (with more propriety I might have called it the 500, or 1000 mile road,) while humanity and justice are as fast asleep as ever London watchman was at his stand. In the one case, not a single day's delay will learned gentlemen endure to hear of, "*without some very good reason assigned:*" — in the other case, days of delay by hundreds, not to say by thousands, insisted for, and not an attempt to assign so much as the shadow of a reason. — But *nemo dat quod non habet.*

Thus it is, that, till that explanation shall come, of which your Lordship will judge whether it can ever come, your Lordship has not only reasoning, which (being my reasoning, and without any intrinsic authority for its support,) is worth so little, but authority, which (including, as it does, the authority of the right honourable president,) is beyond all price, for being persuaded, that the natural system of procedure is "most excellent," and even for causes of all sorts and sizes: at any rate, if administered with the benefit of that learning, which, if properly commissioned, nothing but its own diffidence, (shall I say?) at any rate its own reluctance, can prevent from administering justice in this "most excellent" mode, in which unlearned gentlemen administer it without difficulty, and so much to the satisfaction of their learned superordinates.

Their satisfaction — yes, my Lord, and their delight. For it would do your Lordship good to turn to Mr. Hutchinson's book, and see with what energy these learned persons, over and over again, plead the cause of Natural Procedure, as personified in these small-debt courts, always supposing that at the exact sum of £5 she makes a full stop: by how rich a fund of virtue, in the shape of candour, disinterestedness, devotion to the laws, love of justice, and I know not how many other shapes, all that eloquence has been fed. But, until that explanation shall come, which can never come, it may be worth your Lordship's while to consider, lest the force of such high authority should act in a wrong direction, whether *necessity* was not the material of which all that virtue was composed, and whether the real object were not (seeing that what was done could not be undone,) to stop the unprofitable system from going further; and, for that purpose, upon the strength of so much virtue, to obtain credit for the insuperability of that inestimable bar, of which no description was given, because it was not to be found.

A circumstance which does not tend to weaken this suspicion, is the care taken to bolster up this bar, by the hack epigram, made by Montesquieu, and retailed by Blackstone, in which the idea of incompatibility as between *justice* and *liberty* is insinuated: a piece of sophistry which, whether in design or no, may be set down as being, in tendency, one of the most mischievous that wit was ever employed in varnishing; and which, before I close this address, I feel myself strongly tempted to strip of its varnish, that lawyers in general, and especially lawyers to whose authority height gives weight, may, by shame, and fear of public indignation, find themselves estopped from using it.

Four-and-twenty thousand six hundred causes in little more than eight years, making 3,075 causes in a year, is the number stated by the Mr. Hutchinson and his right honourable collaborator (i. 144,) as determined in one alone of two small-debt courts "in the Edinburgh districts alone of the county of Edinburgh, exclusive of the two other country districts:" — population 82,560, as per returns printed by the House of Commons; viz. if my conception of the districts meant to be designated by him be right, of which I can form no assurance; but, take it in any way, to the purpose of the conclusion, there will be little difference:—

Number of causes of the same description afforded by the whole population of Scotland, setting down at 0 the causes determined by the other Edinburgh small-debt court, but supposing the whole population of Scotland equally fertile in suits	59,540
Numbers of "new causes introduced per week into the Court of Session," (as per Edinburgh Review, January 1807, p. 469) "about 150 or 200," (say then) - - -	175
Making, per year, supposing 26 of these weeks in a year (vacation times excluded,) - - - -	4,550

Now then, my Lord, if the mode of procedure pronounced "most excellent," by that right honourable and most competent judge, be not to his belief most excellent, how can he justify himself (ask him, my Lord) in certifying it to be most excellent in these 59,540 cases? But if it be so excellent (always saving and reserving to him the benefit of that distinction which will never come,) how can he justify himself in opposing the ineffable and unsurmountable bar to the extension of this most excellent mode to the 4,550 causes?

One observation more, my Lord, to save learned gentlemen the trouble of seeking support in a straw, which would break in their hands as soon as touched. In vain would it be to plead in bar to the *personal appearance* of parties, the *vexation* it would be attended with.

1. The vexation which you grudge not to impose on 59,540 persons, shall you grudge the imposing it on 4,550?

2. The vexation which does not prepon-

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derate against the advantage in so many other shapes where the *value* at stake is no more than £5, shall it preponderate where the value at stake is 10, 100, 1000-times as much?

3. The vexation which you never grudge imposing upon a man where the cause he is to attend upon is one in which he has no concern (I speak of *extraneous* witnesses,) shall you grudge the imposing it upon him where the cause is *his own?*

4. Thus the matter would stand, as between *one* man in the character of a party, and another man in the character of a witness. But, my Lord, who does not know, that frequently the appearance of a single man in the character of a *party*, will save the appearance of *any number* of men in the character of *witnesses?*

5. The vexation attached, under natural procedure, to the personal *attendance* of a party before the *judge*, is less than that portion alone, of the vexation attached to technical procedure, which consists in the attendance necessary to be paid to *his own lawyers*.

6. Vain and groundless will be seen to be every use that can be made of the article of *vexation*, in the character of an objection to natural, as opposed to technical procedure, when it is considered, that of the vexation attached to litigation in general, and in particular of the portion attached to attendance of parties, little less than the whole was *factitious* — the produce of the industry of the predecessors of learned judges, made by them in conjunction with one set of their partners, viz. *malâ fide* suitors; who, for the part borne by them in it, get payment — plaintiffs, as above — defendants, also as above, besides the benefit of delay: — *factitious mischief*, made by the *managing partners* on purpose, in order to force men, as they did, injured and injurers together, into the hands of another division of the partnership, — the hireling and naturally treacherous assistants and substitutes of the parties.

The effect was produced — partly by swallowing up the local judicatures, and thus enhancing the vexation and expense of *journeys;* — partly by encouraging *sham excuses* for non-appearance, called *essoigns*, and multiplying incidents *ad infinitum*, and so enhancing the vexation and expense of *demurrage;* — all this in a state of society which afforded neither roads, nor carriages, nor lodging-places, nor safety anywhere.

In my first letter, in hanging up the two companion-sketches of natural and technical procedure, I had occasion to state this; — and now, to prove it, I call the right honourable the Lord President.

But, my Lord, his evidence (your Lordship sees) is already *half* given: — *a single day*, viz. a few minutes in that day, is all the time he says (as above) that a cause ought to last in general, and setting aside the extraordinary cases. There is the *half* that has been already given: the other half, that remains to be given, consists in an estimate of the *number* of days, *minimum*, *maximum*, and *medium*, which the same individual cause, that ought to be, and commonly is, dispatched in a small part of a day, by unlearned judges (parties being present at the outset,) would be drawn through, in the hands of those learned persons over whom he presides: — be drawn through — I mean, in the several cases of its visiting the 1st, the 2d, the 3d, and the 4th, of those *degrees of jurisdiction*, to the number of which, as not being yet sufficient, it is now proposed to add a *fifth*.

It is not without pain, believe me, my Lord, that I feel myself obliged to come to such close quarters with my learned adversaries, if such they are to be, and to apply a scrutiny of so rough a texture to a book which commands my admiration by so many titles. But, if I thus treat them as adversaries, it is for the purpose of converting them into allies: — and, labouring under such a load of disadvantage, contending against principalities and against powers, having a great battle to fight, and but one pair of hands, and those very weak, to fight it with, prudence will not suffer me to neglect an advantage so eminent and so rare.

Nothing, my Lord, do I impute to these two learned persons, or either of them, that I do not find myself equally obliged to impute as the effect of the original sin of the whole race, to all the *Inns*, whether of *Court* or *Chancery*, as well as to the whole *College of Justice*.

Ah, my Lord! — if your Lordship could but prevail on the Lord High Chancellor, or the Lord Chief-Justice of all England, to write a book, or, what comes to the same thing, to give a "regular revisal" to one, "sheet by sheet, without one exception," — to a book, I mean, showing how everything is as it should be, and, in particular, how jury-trial, *placed* and *ordered* as it is, is a boon so perfect as to "*excite astonishment at the blindness that can hesitate about acceptance;*" — could your Lordship, by any entreaty, obtain for England a lecture *ex cathedrâ*, correspondent to that which has been so generously and spontaneously bestowed upon Scotland — ah, my Lord, what sport should you then see!

But to return to my experiment; — a *competition*, if such it must be called — not between *judge* and *judge*, both under the same system, but between *system* and *system*, technical procedure and natural procedure. Here would be an experiment indeed, my Lord: — a true *experimentum crucis*. Has your Lordship nerves for it? "*Fiat experimentum*" was the favourite *dictum* of that Chancellor, who, I presume, had his seat in the cabinet of that

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day, and who was at once the father of philosophy and the legislator of legislators. "*Fiat experimentum*" was the language of Lord Chancellor Bacon: would it be the language of Lord Chancellor Erskine?

LETTER III.

PROPOSED SYSTEM OF PLEADING.

In the present letter I propose to say what little there seems at present any use in saying on the little that, on the subject of *Pleadings*, I find said in resolution the 5th, — the resolution which takes that subject for its theme.

"Resolved, — 5. That in all causes, whether originally brought before the Lord Ordinary, or before the Chambers as Inner-House Causes, the defender shall, in his defence, *distinctly* admit or deny all relevant facts alleged in the summons, or other writ by which the cause is brought into court."

Further on, my Lord, I observe profession ample, and yet performance scanty: — but where what is professed is nothing, what can be expected of performance?

Of this profession, the manifestly professed object is diminution of factitious delay, vexation, and expense: viz. in so far as the defendant's share in the process called, in English law, *pleading*, is concerned.

Now, my Lord, were it really an object to do away, or diminish, the factitious part of that aggregate mass of inconvenience, learned gentlemen would not, could not, be at a loss. Admit, compel even, both parties, in the first instance, into the presence of the judge: sending them, however, not from the Orkneys to Edinburgh, but from the Orkneys to Kirkwall. Scotland has the happiness of possessing already a set of *local* courts, by which the Scotch metropolitan courts stand divested of the pretence, which the English ones have made to themselves, for turning a deaf ear to that first principle of justice. Admit them; — but under that security for veracity which is never refused, in the case where temptations to the opposite vice have no existence: — which is never refused in the case of the most unexceptionable *extraneous* witness: — take away, in a word, the *mendacity-licence*, as it is already taken away in those civil courts where justice, in all its shapes, is *really* the object — in the English *courts of conscience*, and in the Scotch *small-debt courts*.

Do this, and all "relevant facts" will really be either "admitted or denied:" and on each occasion, with whatever "*distinctness*" the ends of justice, in the opinion of the judge, require: if the first word is not distinct enough, he calls for a second: and so on, till he gets one that he looks upon as adequate to the purpose: being exactly what happens where a man is heard and examined, and cross-examined, in the character of an extraneous witness: — and (what is more,) along with the *distinctness* you will get *truth*: at least as surely as you could expect to get it from an extraneous witness; — that truth which would so ill accord with the interest of the learned framer of the resolution, and his learned partners, and which accordingly he does not so much as profess to aim at.

What! — put an end to *written pleadings*? — rob us of our business? — knock up our profession? — substitute Turkish to Scotch and English justice? Whence comes this man? — from the Jacobin Club, or from St. Luke's? Loud laughter among learned lords and gentlemen: — but will Lord Grenville join in it?

The defendant *shall* (says the learned reformer) be "distinct" in his "admissions and denials." What! does it depend upon him, then, my Lord, to give distinctness to the language of a man he never hears? and, in a word, of every man? Yes, if he were a judge, with the defendant before him: — but that is the very thing which no learned lord or gentleman can ever bear to think of. And yet he commands, and, in commanding, undertakes for, and predicts distinctness. Now then, my Lord, let us see what are the chances his prediction has of finding itself fulfilled. As often as the defendant is *in malâ fide*, which in the most common sort of cause (debt) is most commonly the case, it is the interest of that one of the *parties* that there shall be no such distinctness: be he in *malâ* or in *bonâ fide*, such, at any rate, is the interest of his *lawyer*: and on these two it is — but in an infinitely greater proportion (taking the suitors in the aggregate) upon the lawyer, that distinctness depends. Now then, as to the chance of fulfilment, how stands the matter *at present*? No distinctness at present; — for it is the want of it that is the very grievance to be remedied: — how as to the *future*? — though distinctness is the sole object, nothing is so much as proposed for promoting it in future: — and yet the learned reformer, with his prophetic as well as imperative *shall*, makes sure of it.

The learned gentleman, who has distinctness at his command, had he begun with giving it to his own conceptions and expectations, might it not have been of use?

On occasions of this sort, my Lord, there is a something, which, without the aid of learning, common sense is pretty much *in* the habit of doing, towards securing *distinctness* in respect of *admissions and denials*: and that is — whatever, having been asserted on one side, is not denied on the other, to set down as admitted: and whatsoever, being attempted to be denied, is not denied with sufficient distinctness, to set down that too, upon occa-

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sion, as not denied but admitted. Such is the practice, my Lord; and that not only where common sense is happy enough to continue unoppressed by learning, but even in the midst of learning, and in spite of it: — for example, in all reciprocating *affidavit-work*, not to mention other instances.

Had he gone thus far, and said — Whatsoever relevant facts, being alleged in the (plaintiff's) summons, &c. are not denied (or are not distinctly denied) by the defendant in his defence, shall be regarded as admitted — by so doing, something might perhaps have been done: done, I mean, towards the apparently professed object — the abridgment of these written pleadings, with their *io*, *mio*, and *arrio* of delay, vexation, and expense: — and this, too, though perhaps not altogether without cramping, yet certainly without knocking up, the learned trade.

I speak, my Lord, taking the matter upon the footing of the French *chevalier d'industrie's* position — "*Monseigneur, il faut que je vive:*" and setting aside, as surplusage, the *lieutenant de police's* reply — "*Monsieur, Je n'en vois pas trop la necessité.*"

The case is, my Lord — as, I hope, I may now say your Lordship sees — that, so long as written pleadings, especially in the Scotch style, continue to be received — without *oath* or equivalent security, or faculty of *counter-interrogation* — it is the interest of those on whom it depends, and it depends on those whose interest it is, that there shall be no end to them on either side, nor therefore any distinctness in them or truth: — and it is in this state of things that the learned reformer undertakes, by his *fiat*, to infuse distinctness into all conceptions and all pens.

My Lord, on this subject there is a supposition which I really know not how to get rid of, and which is — that in presenting to your Lordship this his recipe for the cure of indistinctness, the learned practitioner must have represented himself as doing something which had not been done before. Never, surely, could he have said to your Lordship — this my *nostrum* is one of the *powder-of-posts* which the *Pharmacopœia Juridica Edinburgensis* is full of — which we have been administering every day for these twenty years, and which has never yet been found to have any more effect than it was designed to have. No, my Lord; this could never have been his language: — what he must have said, is — this is a *new preparation*, which will now come to be tried for the first time, along with the other novelties.

Such was the character I had of course ascribed to it. Judge, my Lord, of my surprise — a surprise in which I should expect your Lordship would not be altogether without a share — when, in rummaging among the Acts of Sederunt, I found a part of one, and of so recent a date as 11th August 1787, in these terms: — "When the defendant receives the summons, he shall therewith return, upon a separate paper, his whole *defences*, both dilatory and peremptory, stating the facts he is to insist upon, and *explicitly admitting or denying* the several facts set forth in the pursuer's libel."

To be sure, the tenor is not precisely the same: — anno 1787, *explicitly;* anno 1806, *distinctly:* — but whether, in *purport*, there be any material variance, your Lordship will judge.

Now then, my Lord, this law of the Scotch judges, is it acted upon, or not? If acted upon, your Lordship sees what has come of it: if not acted upon, but neglected, what security does the resolution give — what security is it in the power of the learned author to give — that the neglect will not continue? As to neglect, your Lordship will please to observe, that it is no more than has happened to many and many a law, of more substantial texture. For, my Lord, in the Court of Session, the very carpet they tread upon is made of shreds of laws, enacted, broken to shivers, lying one upon another in heaps, unabrogated, unremoved: — a carpet, than which none was ever softer, to the foot of a corrupt or partial judge. But of this among the *Omissa*.

All this while, if by *pleadings* are to be understood *demand*, with *particulars* and *grounds* of demand, on one side — *admissions* or *defences*, with *grounds* of defence on the other — think not, my Lord, that if it depended upon me, *written* pleadings would be no more. On the contrary, *printing*, where properly managed, being a cheaper mode of *writing*, great and constant use would be made of them: though, unfortunately for their reception, upon such terms as would be of little use to pleaders.

But, my Lord, without a body of *substantive* law to stand upon, *a system of pleading is a superstructure without a foundation.* Without this basis, an edifice fit for any better purpose than that of a labyrinth, for harpies to burrow and fatten in upon the blood of suitors, is an impossible work: — on this basis, foundation and superstructure together, comparatively an easy one: — but of this in the *Facienda*.

Yes, my Lord: speak the word, and *a body of law, with a system of pleading raised upon it*, you shall have. Comyns, title *pleader*, shall be taken into the laboratory. It shall be thrown into the roasting furnace; the arsenic, 60 per cent., will fly off in fume: — it shall be consigned to the cupel; the lead, 30 per cent., will exude out, and repose for everlasting in the powder of dead men's bones. The golden button, 10 per cent., shall be gathered up, my Lord, and made the most of.

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On the present occasion, with the benefit of second thoughts, I spare your Lordship's indulgence no light load, which, under a first impulse, I had destined for it, about *issues, general* and *special, summonses* in the Scotch style with *libels* in the belly of them, and Scotch *petitions*, and English *declarations* and *pleas*, and English *assumpsit, trover*, and *ejectment*, and Scotch *ranking* and *sale:* and the existence in Scotland of the equivalent of English *declarations*, and the non-existence of the equivalent of English *pleas:* — and the original old English Castle of Chicane, and the new wing *added* to it in Lord Mansfield's time (for in business, *addition* is as welcome as *subtraction* is invidious,) to wit, under the name of "*particulars*," and so forth. How fortunate is it, for one of us at least, that the discovered nihility of this part of the learned improver's basis, saves me from the task of seeking to load it with any such superstructure!

LETTER IV.

PROPOSED TRIAL BY JURY.

WRITTEN pleadings, my Lord, with the benefit of the mendacity-licence — the assumed necessary foundation of jury-trial—being thus provided for, we come to the superstructure.

"RESOLVED, — 6. That if the defendant shall, in whole or in part, deny the facts stated by the pursuer, or shall in his defence make any averments, in point of fact, which shall subsequently be denied by the pursuer, the Court or Lord Ordinary respectively, on the requisition of either party, or the Court at their own discretion, shall order that the issue of fact shall be tried by a jury, except in such cases as it shall be found proper to except from this rule.

"7. That when it appears to the chamber, or to the Lord Ordinary, reasonable that such issue so directed shall be tried in that part of the country where the evidence can be most easily obtained, it shall be competent to remit the cause to the nearest circuit, to be there tried by a jury.

"8. That whenever, in the inferior courts, proofs shall have been allowed, it shall be in the option of either party to apply to the Court of Session, in order that the issue may be tried by a jury, if the court shall so think fit. But if neither party apply for the trial by jury, the cause may be decided by the inferior courts, according to the forms now in use, and afterwards in review by the Court of Session by jury, or otherwise, as the court shall think fit.

"9. That it shall be competent to parties to complain against verdicts of juries, that the same were given contrary to evidence, or by misdirection of the judge sitting as Ordinary, or on the circuit, or presiding in the chambers."*

Before I proceed upon the learned Reformer's plan about jury trial, permit me, my Lord, to submit in the first place, and — Scotland, not England, being the proposed scene of action — without reserve, the use which, on my plan, would be made of that security, in *civil* suits.

In the second instance, or degree — call it *new trial*, as being after a former one, though before another judicature — call it *appeal*, as being from the decision pronounced by my single judge, on the trial carried on by and before himself alone—I would have *all* causes, so far at least as concerns the question of *fact*, capable of being brought before this species of tribunal: the first trial being, of course, supposed to have been carried on in the *natural* mode; as in the English courts of conscience, the Scotch small-debt courts, the courts in both countries composed of justices of the peace, acting on *civil* occasions (as in some instances they do) out of general sessions — and so forth.

In the first instance, I would *not* have *any* civil cause ever brought before a jury: either of course, or, as proposed in the resolutions, at the instance of a party, or by order of the court.

And now I will submit to your Lordship, as shortly as I can, why I *would* have jury-trial in *all* causes in the second instance, and at the same time why I *would not* have it in *any* civil cases, in the first instance: it being all along understood, and carefully remembered, that the decision in the first instance has been come to in the *natural* mode.

1. Trial by a judge, a single judge, is the original, domestic, natural, most simple mode: as such, it ought not to be departed from without some special reason.

2. Trial with the addition of a jury has for its inseparable accompaniment more or less of additional inconvenience, in the shape of *delay, vexation, and expense.*

3. Jury trial, therefore, cannot be subservient or reconcilable to the ends of justice, any further than as it affords an additional *security against misdecision*, including, what is equivalent to misdecision, *failure of justice.*

4. That it is capable of being made to afford a highly valuable *security against misdecision*

* Jury-trial in civil causes was extended to Scotland in a limited form by 55 Geo. III. c. 42. (2d May 1815,) appointing a Chief Commissioner and two Commissioners of the Jury-Court. The operation of the system was extended by 59 Geo. III. c. 35 (19th May 1819,) and afterwards by 6 Geo. IV. c. 120 (5th July 1825,) which appointed two additional Commissioners. Provision was made by 1 W. IV. c. 69 (23d July 1830) for abolishing the jury-court as a separate tribunal, and for uniting its authority to the ordinary jurisdiction of the Court of Session.—*Ed.*

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I admit, or rather I aver, and am ready upon occasion to maintain: but, as this is admitted on all hands, to argue it here would be superfluous.

5. That it affords a general *persuasion of security against misdecision*, is also admitted on all hands: and therefore need not here be argued. And this advantage, though intimately connected with the other, is perfectly distinct from it, and abundantly more valuable.

6. Its affording any additional security, depends upon its being thought to do so, by one or other of the parties: they being, as to this point, in each individual instance, the only persons competent to judge. If, in the decision pronounced by a single judge, there be not in the opinion of either party any misdecision, *i. e.* if neither of them be dissatisfied with it, no other person can have any reasonable ground for supposing any: and if no misdecision, no additional security against misdecision can be of any value.

But neither a suitor, nor any one else, can have any rational ground to be dissatisfied with any decision — with a decision formed by a single judge — till he knows what it is.

7. Upon the same causes, will the general *persuasion* or *opinion* of security against misdecision, as obtainable from jury-trial, depend.

8. Therefore, in respect of security against misdecision, jury-trial, in the second instance and not before, is *not less good* than jury-trial in the first instance.

And now I will submit to your Lordship why, in respect of security against misdecision, jury-trial, in the second instance and not before, is *better* than jury-trial in the first instance.

I. In whatever cases, if any, it is neither necessary nor possible that jury-trial should contribute anything in the way of security against misdecision, in all such cases jury-trial in the first instance is purely bad: consequently, in all those cases, jury-trial in the second instance, in so far as it imports exclusion of jury-trial in the first instance, is preferable.

But cases of this description exist, and in the whole to a very considerable extent: probably much beyond all the others put together.

In this predicament stand *undisputed* causes. In the *Report* of the committee of the House of Commons (order for printing dated 2d of April 1792,) *on imprisonment for debt* (p. 27,) the number of bailable writs annually issued in Middlesex alone, is stated at 9,500. So many writs issued, so many actions commenced. But the writs included in this enumeration are such only in virtue of which the defendant is or may be arrested and held to bail. The total number of writs issued, including those in virtue of which the defendant can not, as well as those in virtue of which he can, be arrested — in a word, the total annual number of civil actions of all sorts *commenced*, — must therefore have been much more considerable.

But in that same report (p. 30) the whole number of civil causes of all sorts annually *tried* in Middlesex, in the King's Bench and Common Pleas together, is stated at 750: which, adding those tried in the Exchequer, would unquestionably not have amounted to so many as 1000.

Taking this for the proportion, here then are for every *disputed* cause about 10 *undisputed*.

In the same page, the number of actions, annually terminated by writ of inquiry before the under-sheriff of London, is stated at about 924. But in this number the London as well as the Middlesex causes are included: those commenced by bailable writs, as well as those commenced by writs not bailable; and the undisputed as well as the disputed ones: these must therefore be thrown out of the account.

II. In whatever cases, if in any, jury-trial in the second instance, and not before, being not only *physically* but *prudentially practicable*, jury-trial in the first instance is *physically impracticable*, in all such cases jury-trial in the second instance, and not before, is better than jury-trial in the first instance: meaning by *prudentially practicable*, practicable without additional and *preponderant* inconvenience, whether in the shape of increased *probability of misdecision*, or of increased *delay*, *vexation*, *and expense*. But there are several of these sorts of cases; and, in the whole, to no inconsiderable extent.

III. So where, being in the second instance *prudentially practicable*, as before, in the first instance, though not *physically*, it is *prudentially impracticable*. But there are also several of these cases: and here, too, in the whole, to no inconsiderable extent.

IV. So where, being in both instances *prudentially practicable*, it is, in the second instance, and not before, *practicable to more advantage* than in the first instance, whether in the way of saving of *delay*, *vexation*, and *expense*, or in the way of security against *misdecision*, or in both ways.

For the purpose of *conception*, cases where jury-trial in the first instance is *physically* impracticable, and those in which it is *only prudentially* impracticable, may, as above, be considered *separately*: — But, for the purpose of *exemplification*, they can no otherwise be considered than *together*.

Why? Because to exhibit the *forms* of jury-trial will in every case be physically practicable, whatsoever becomes of justice.

In a civil case, not to speak of criminal cases, whatever cause is decided by a jury, such cause, if tried under that condition which is regarded, and justly, as essential to jury-

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trial — that is, to whatever superior security, real or apparent, against misdecision, it may be capable of affording — must be tried in the compass of *a single sitting:* or, what comes to the same thing, if any adjournment take place, that adjournment must be performed in such a manner that the jurors shall not, any of them, have any communication with the world at large: in a word, they must be in a state of seclusion, as in a Roman *conclave* *In civili*, no instance of a jury sleeping before verdict ever reached my knowledge. *In criminali*, in the case of Elizabeth Canning, who in 1754 was convicted of perjury, the trial lasted *ten days:* during all which time, if in this respect the trial was properly conducted, the jury must have been kept in a state of seclusion: though in the account of the trial (State Trials, vol. x.) I see nothing mentioned on that head.

The operations for which, in every instance, time either is, or eventually may be, necessary, are — 1. Delivery of the *evidence* — whether testimonial, written, real — whatsoever the cause affords. 2. *Observations* preliminary and subsequential, by or in behalf of the parties on both sides. 3. *Charge* of the *judge*, including recapitulation of the evidence where necessary, and observations. 4. *Discussions* among the *jurymen*, when withdrawn to their private chamber for that purpose.

But the cases (the individual cases) in which the complete performance of those several operations is physically impossible, are very materially numerous — bear a very considerable proportion to the whole number of causes destined, in *appearance* at least, to this mode of decision, as being commenced in a mode which admits not of any other.

Of these four operations just mentioned, three are *comparatively* immaterial: viz. *observations* by or on behalf of the parties, *charge* by the judge, and *discussions* among the jurymen: and the two last, either or both, are not unfrequently omitted in practice.

But the delivery of the *evidence* — of whatsoever information, being presented in that character by either party, is neither *irrelevant* nor *superfluous*, is essential to the affording the requisite security against misdecision — is essential to justice.

Numerous are the causes which receive their decision from *arbitrators:* — in some instances, *without* litigation in the regular mode: in other instances, *after* litigation in the regular mode: the cause, coming on in its turn to be tried by a jury, is, in this case, instead of being so tried, *referred*, somehow or other, to arbitration; if not otherwise disposed of.

When, in this way, instead of being tried by a jury, a cause is tried by arbitrators, the mass of evidence is not unfrequently of such a bulk, as to be incapable of being delivered in less time than several days, perhaps even weeks. As often as this state of things has taken place, the employment of jury-trial in the first instance has thereby been proved to be *prudentially* impracticable.

Physically impracticable, however, if no regard be paid to the ends of justice, it can not in *any such* case, it can not in any case, be said to be. If, the mass of relevant and not superfluous evidence being of such a magnitude that the delivery of it cannot be performed in less than ten *days*, no more than ten or twelve *hours* be allowed for the reception of it, but at the same time the forms of jury-trial are observed, and a decision — a verdict — extracted from the jury, in this case jury-trial is not physically *impracticable*, for it is *practised*.

In this case, the best thing that can happen to a cause, is — that jury-trial shall in that instance have been deemed and allowed to be impracticable. For then the attempt to try it in that mode is given up, and it is sent off to a *reference*, or otherwise disposed of.

If this be not its fate, a cause thus incapable of receiving a trial by jury, in the first instance, in a manner consistent with the ends of justice, receives it notwithstanding. As often as this happens, the party who is in the right is divested of that superior chance of success, which, if the cause were tried properly, he would possess: his chance of 2, 3, 4, or whatever it be, to 1, is reduced to a chance of 1 to 1; — is an affair of cross and pile.

Remain to be spoken of the cases in which, though when absolutely considered, jury-trial in the first instance cannot be said to be, either in the *physical* or *prudential* sense, *impracticable*, it is yet *ineligible:* ineligible, to wit, in comparison of jury-trial in the second instance, and not before: — and that for special reasons, over and above the already-mentioned general ones.

Causes thus circumstanced, there will presently be found reason for distributing into two classes: both of them, however, agreeing in this — viz. that, if (according to the standing supposition) commenced in the *natural* mode (by conjunct appearance of the parties,) they would be incapable of receiving, consistently with the ends of justice, their termination *on the same day* on which they thus receive their commencement. Whether or no the cause can or can not receive its termination, at a period thus pure from delay, vexation, and expense, cannot be known till something in relation to it is known, viz. from the only authentic source — till the parties, being thus met together, have been heard: and as a considerable proportion of the whole number of causes may and do receive their termination at this early period, the measure

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taken for the attainment of the ends of justice would be imperfect, jury-trial being employed in the first instance, if, at the very commencement of the cause, a jury were not in waiting to receive it. But, as before observed, when once they have begun their business, a jury, to remain a jury, cannot part till they have gone through with it. As often, therefore, as it turns out, that, from the jury before whom the cause has thus been commenced, it cannot receive its termination, this jury must be discharged from it; and, if decided in the way of jury-trial, it must receive its commencement and termination together, before some other jury, at some other time.

Here then, besides so much of the *labour* of twelve men in the character of *jurors* thrown away, there is so much time and labour thrown away on the part of *all other persons* who bear any part in the cause: — judge, subjudicial officers, parties, and, if they have any, their professional assistants, with the money expended in affording a retribution to those assistants.

Moreover, of a cause thus circumstanced, another jury could not take cognisance, without further manufacture of useless *delay*, *vexation*, and *expense*. Whatever evidence had been submitted to the first jury would have to be submitted over again to the second.

Meantime, for want of taking it at the earliest period, some of the *evidence*, which but for this second jury-trial might have been had, may have been *lost:* and thereby deception and *misdecision* generated.

Moreover, of the first crop of evidence, more or less of the *freshness* and instructiveness may have been *lost:* time having intervened for *premeditation*, opportunity of receiving *undue instruction*, information from experience what falsehoods stand most exposed to detection or contradiction, what others may be hazarded with less risk. Then too comes, perhaps, an inconsistency, real or supposed, between the *first edition* of the evidence and the *second:* and discussions carried on, and time consumed, in the endeavour, successful or unsuccessful, to clear it up.

These, it is true, though not altogether without their concomitant advantages, are inconveniences inseparable from the sort of appeal called a *new trial*, if conducted with that full liberty of confrontation and discussion, which is necessary to the taking the best chance for the discovery of truth. But their being in that case unavoidable, is no reason for incurring them where they may be avoided.

Many, likewise, are the instances in which it would be impossible to fix a particular day for another jury, unless it were at a venture, taking the greatest length of time that in any event can be necessary. Here, then, is an indefinite quantity of *delay* produced, that under a permanent judge might be avoided: for, under a permanent judge, each article of evidence naturally will be, as it ought to be, received on the earliest day on which, without preponderant inconvenience, it can be had.

I come now to speak of the two classes of cases above alluded to, both comprisable under the above description, but, in a highly material point of view, standing upon very different grounds.

One case, and the more common of the two, is when the mass of the evidence which the cause furnishes, having been delivered in part, viz. so much at least, if any, as had fallen within the cognizance of the parties, or either of them, the remainder, though *known* to the parties by whom it is respectively to be produced, is *not forthcoming* at the time. "My demand," says the plaintiff, "will be proved by *Oculatus:* but he lives at a distance, and it requires the power of the court to secure his attendance: or it will be proved by such or such a written document: but that is in the hands of *Custos;* and *Custos* would neither bring it nor trust it out of his hands." — Say then,

Case 1. *Evidence, all known, but not all forthcoming:* — or rather, to contrast the better with the other case. — *Evidence, though not all forthcoming, all known.* Say now,

Case 2. *Evidence, the existence of it more or less of it unknown:* requiring to be brought to light; viz. by *investigatorial* procedure.

Investigation or *investigatorial procedure* — a new and necessary name, for a practice in common use, but not as yet sufficiently distinguished.

Investigatorial power — power for tracing out evidence, in the way of investigatorial procedure: — for the discovery of evidence ultimately employable (evidence fit to be received into the *budget* of evidence, as parcel of the mass on which the decision may with propriety be grounded,) by means of other evidence, whether itself ultimately employable or not. From his connexion with one or other of the parties, or from any other relative situation, real or supposed, A is supposed to be capable of furnishing relevant evidence. When convened, A, of his own knowledge, knows not anything about the matter: but, through him, the judge hears of B, who does. So, in regard to *written* or *real* evidence, A has not the document sought: but he indicates B, who is supposed to have it. B, being convened, if he has it, produces it: if not, he indicates C, who, if he has it, produces it: if not, he indicates D: — and so on through the alphabet.

In what precise shape the assistance rendered to justice by this power shall show itself — against which of two evils opposite to the ends of justice it shall afford a remedy

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— failure of justice or misdecision — depends in each case upon circumstances.

Suspecting, nay, assured of the existence of the requisite mass of evidence; but, for want of this necessary instrument, feeling his inability to bring it to light, in many instances the plaintiff, despairing of success, forbears to present his demand to a system of judicature, of whose inability to give effect to it he is thus pre-apprised. In these cases, *failure of justice* takes place: but nothing worse.

In other cases, assured of having right on his side, but not sufficiently attentive to the obtaining a timely assurance of the means of giving effect to it, he commences his suit, and afterwards, with an article of necessary evidence in his view, understands, when too late, his inability to produce it. In this case, the mischief takes the shape of *misdecision:* misdecision, to the prejudice of the *plaintiff's* side, for the want of necessary evidence, existing but not producible. And here, to the suffering attached to the failure of justice, is added the *vexation* of disappointment, and the *expense* of the costs on both sides.

Thus stands the matter, where the mischief that takes place for want of this power falls on the *plaintiff's* side. But the *defendant's* side, though not quite so much exposed to it as the plaintiff's, is far from being exempt from it. When it falls on this side, it is in the more afflictive shape that it falls: — *misdecision*, aggravated by burthen of *costs*.

Be the case criminal or civil, your Lordship sees how necessary an instrument this power is to the hand of justice: how lame, how paralytic, that sacred hand cannot but be, if deprived of it. A few pages further, and your Lordship shall see — if not *justice, judicature* — technical judicature — standing with her shrivelled hand, lame of that palsy. The *right* hand, — the hand by which justice should be distributed, may be seen, from a variety of other causes, subject to those fits: while the *left* hand — the hand which, by a pre-established *mechanism*, gathers in and closes upon the fees, as the *Dionæa* upon flies, is ever alert and vigorous.

When, at the outset of the cause, any part of the mass of evidence which it affords is unknown, the *tracing it out* thus from hand to hand may, considering that the hands may be at any distance from each other, *occupy any length of time:* the evidence of witness A being obtainable on one day, of witness B not till another day, week, month, or even year, and so on without any certain limit: half a dozen witnesses not examinable but at so many different days: on each day it being uncertain whether the next day may not complete the mass of evidence. That on each day a jury should be in waiting, for the purpose of taking the chance of being able to give termination to the cause on that day, is an arrangement, the impracticability of which will scarcely be thought to stand in need of proof.

To warrant the judge in causing the mass of evidence to be laid before a jury, whether summoned for that special purpose, or already in waiting for general purposes, there must be a sufficient assurance on his part, that all the evidence which, in his judgment, the cause is capable of furnishing, or such part of it as is necessary and sufficient to ground a decision on either side, is already forthcoming, or will be so time enough for their taking cognizance of it.

On this occasion, let it not be forgotten, that, till an article of evidence has actually been *received*, there can never be any perfect assurance of its being *forthcoming:* to whatever class the evidence belongs, testimonial, written, or real, accident or design — misconception or right conception — may, when the time comes, have kept it at a distance: — and to all these contingencies, the *jury's* capacity of fulfilling the purpose for which they are brought together remains for ever subject.

But, in the case of the permanent *judge*, if the *whole* mass of the evidence has thus been really *got in* — got in *by himself* — he perfectly *acquainted* with it—having received it in its *original* and *freshest* shape — the *grounds* of the decision which the case calls for being thus completely *known to him* — the case in effect already *tried by him* — to what use *try it over again*, if, of all the persons concerned, there is not one who desires to have it so?

To parties, to witnesses, to juries, to judge, to everybody, double trouble: useless and factitious *delay*, *vexation*, and *expense:* and (fee-fed lawyers always excepted, to whom everybody's suffering brings advantage,) not a particle of advantage, in any shape, to anybody.

In every case, no sooner is the cause become ripe for decision, than my *single* judge, my *sheriff-depute*, unincumbered with a jury, *circumduces the proof* (as a Scotch lawyer might say,) *closes the budget*, as I would say, and pronounces — not an interlocutor — but final judgment. Now from this decision, pronounced without an atom of time or money wasted, what possible prejudice can result to justice? The party to whose disadvantage it operates, is he satisfied with the decision? Nothing better could be wished for, had the cause been dragged through a thousand jury-boxes. Is he dissatisfied? He has a jury: he has it, in that case, and in that case alone, in which he desires to have it: — in which it will be — not an aggravation, but a remedy.

Supposing jury-trial, or the *forms* of it, forced upon the parties in every case in the first instance, the bad effects of this force

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are not confined to the *loading the cause* with this cumbrous additament where it is worse than *useless;* your Lordship has seen it *depriving the cause* of the benefit of this security against misdecision, in cases in which it would be *of real use:* — how frequently these cases come to be exemplified in practice, is a point which I shall have occasion to speak to presently.

At present, what I have to submit to your Lordship is — that when *grafted on natural procedure*, as above, the utility and efficacy of the proposed *postponement* is not more signal, in narrowing the application of this mode of judicature where it is useless and prejudicial, than in *extending the application* of it, wherever it is of real use. For, though there are cases, and to a very considerable extent, in which, *in the first instance*, the use of it is *impracticable*, and even generally recognised as being so, there is no case in which it is not *practicable* in every sense, when *postponed* as above to the *second instance*.

For this purpose it rests with the judge (in the first instance the same judge, eventually, in case of appeal for that purpose, the superior judge) to *decompose* the mass of evidence. If (as will generally be the case) the whole of it (that is, so much as one or other of the parties insists on having *repeated*) be not too much to be laid before one and the same jury, so much the better: but if, in the whole, there happens to be more than a jury can receive on such terms as to do justice to it—receive in the compass of *one sitting*—the cause being in such sort and degree *complex* as to contain at the same time (as, when of such bulk, it can scarce fail to do,) divers *integrant parts*, independent of each other, it may in such case be distinguished and resolved into its integrant parts and different integrant parts, or assemblages of integrant parts, given to so many *different juries*.

By *integrant part*, I understand so much of the mass as is delivered by witnesses, whose *testimonies* respectively *have a connexion with each other:* the testimony of each witness operating either in *confirmation* or *information* of that of the rest.

The *mode* and *degree* of complexity just described will frequently be exemplified, where the case includes a number of facts (whether *individual* or *habitual*) having, in respect of probability or improbability, no connexion with each other: 1. Debt, founded on goods sold and delivered at *different times;* 2. *Demand* on one part, *set-off* on the other; 3. Promise *made* at one time, *broken* at another. — Thus, in adultery:—1. *Marriage* celebrated at one time; 2. Alleged *adultery* (of course) at another; 3. *Wife's loose intercourse* with other men, habit provable by one set of witnesses; 4. *Husband's loose intercourse* with other women, habit provable by another set of witnesses; 5. Husband's *cruelty* towards the wife, habit provable again, perhaps by another set.

But, of the time occupied by each such integrant portion of the mass of evidence, measure, complete measure, has been already taken; — taken by everybody concerned — by judge and parties. It is therefore a point pre-ascertained, and to as great a degree of accuracy as is material, what length of time the delivery of the whole and each part of the mass will occupy, when repeated before a jury.

Separating it into masses of competent length, as many as the extent of it requires, he distributes it to so many juries, giving to each jury one or any greater number of *issues*. One, to try the entrance into the marriage-contract, for example, if it be matter of dispute; as in Scotland, where the contract may be made, as it were, by habit: another, to try the fact of the adultery, and so on.

But, after the evidence has been once gone through — gone through in all its *integrant parts* — it will seldom indeed happen that the disagreement in opinion — I mean that between the losing party and the judge — will extend over *all* the parts. So many as the disagreement does *not* extend to, so many the evidence to which need not be repeated. By the party by whom the decision is complained of, of the number of facts, and corresponding integrant parts of the evidence on which it was grounded, a greater or less part will commonly, if not before, at least after the delivery of the evidence, be admitted. Thus in adultery, suppose the fact of the marriage *once* put out of doubt, by the uncontradicted and unquestioned testimony of the clergyman or other person by whom it was celebrated, or by evidence of cohabitation under the same name and the same roof for years; — to what use, after witnesses *once* heard, and the matter put out of doubt, drag them from their homes, to put it out of doubt a *second* time?

If, then, in such a case, for the purpose of vexation, a party should insist upon such repetition of proof in the second instance, of a fact put out of doubt in the first instance, let him do so, but at his peril: the judge *à quo* marking it as vexatious, it will rest with the judge *ad quem*, with or without the concurrence of the jury, to mark it out for punishment: to punishment in the shape, and to the extent of *costs*, at any rate.

Instead of being distributed among *divers juries*, to be decided upon, all at the *same time*, the integrant and distinct parts of the mass of fact may be given to different juries, or even to the *same jury*, to be decided upon at *different times:* — to the same jury not so well, on account of the danger or suspicion of *embracery*, and so forth.

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In one case, the trying these different parts of the cause at different times will be attended with particular advantage. This is where, pronounced in one of the two opposite ways, a decision given on one of the several component parts of the cause thus decomposed, renders the trial of the rest, some or all of them, superfluous. Thus, no contract, no breach: no marriage, no adultery.

Such are the advantages which jury-trial, *in the second* instance, possesses over jury-trial *in the first* instance, even when grafted on the best possible mode, upon the best and soundest stock — I mean *natural* procedure.

I will now beg your Lordship's notice for the advantages of jury-trial in the second instance, as compared with jury-trial in the first instance, grafted, as under the husbandry of learned gentlemen, upon the corrupt and cankered stock of *technical* procedure — stock and graft together, the tree of good and evil, not to say of evil without good — factitious delay, vexation, and expense, the fruit of it.

The conception entertained by Scotchmen, of common-law procedure in civil cases, with jury-trial in the English mode, will be very incomplete, if, to excess of *delay*, they do not add excess of *precipitation:* for, in the composition of it, vices of this opposite nature meet and embrace in the most perfect harmony. With the help of *vacations* (that is, pre-established *denial of justice* for weeks and months together,) and *fixed days*, and *mechanical judicature* (of which in my first letter,) instead of a small part of *one day*, or a small part of each of *two days* (for where the ends of justice are the objects — I speak of the *courts of conscience* — a great majority of the whole number of causes actually take no more,) *six months* or *twelve months*, or a great many more months — in a cause as simple as any that ever came before a court of conscience — consumed in doing nothing, or worse than nothing: — delay, the staple commodity of Judge and Co., manufactured in this wholesale way, for the accommodation of their best customers, the *malâ fide* suitors. Then come *circuits*, *one* or *two* in a year, according to the *latitude:* from part of one day, to the whole of three or four days, allowed to a place, whatever be the number of causes to be tried at it, and whatever the quantity of time required by each: — a short and *limited* length of *time*, and that frequently short in the extreme, for an *unlimited* quantity of *business*.

Alas! where, my Lord, is the wonder? — That for which sufficient time cannot in any case be wanting, is — *receipt of fees:* that for which it matters not how short the time, is the *service* to be performed in consideration of those fees.

Has *delay* its profits? *Precipitation* is not less productive. But your Lordship will see: —

Of the whole number of causes set down for trial in a year, one part (who can ever say how large a part?) tried badly: another part, as yet unknown, but not incapable of being known (it rests with your Lordship to know it,) and, in the mean time, known not to be a small one, not tried at all. When this is the result, there are three modifications, among which it takes its chance, all of them repugnant to justice.

I. One is, the going off in the character of a *remanet*, or *remanent: i. e.* to be tried at the *next sittings* or *assizes*. Consequence of the postponement as follows: —

1. *Delay.* Cause (suppose) pecuniary — (plaintiff in the right, as in general he is) — *loss of interest* on the principal representing the value of the property adjudged by the verdict: amount of interest, if at the *sittings*, say three months; if at the *assizes*, elsewhere than in one of the four *northern* counties, six months: if in any of those counties, twelve months. For this is among the punishments a man is loaded with, for the *offence* of living in the *country*, and the doubly heinous offence of living in the *northern* parts of it.

2. *Expense.* Expense of trial somewhat less than doubled, on the second — (*trial*, it cannot be called, the cause not having been tried when it should have been tried, but —) *setting down* of the cause upon the list of causes that ought to be tried — some abatement, perhaps, in the professional fees: in the official, scarcely.

3. *Danger of misdecision*, or equivalent *failure of justice*, in consequence of the delay: deperition of necessary evidence, deperition of the *matter of wealth*, in the hands of the adverse party, in the character of eventual *matter of satisfaction:* — deperition, viz. with reference to the party in the right — by dissipation, by concealment, or by exportation.

II. Another mode of termination is by what is called a *compromise:* which, being interpreted, is *denial of justice*.

By the terrors of *remanentcy*, as above explained, the plaintiff *consents* to accept a part of what is his due, giving up the rest. By *consent*, the *traveller* gives up to the *unlicenced plunderer* what money he has about him, in order to save his life. By *consent*, the *plaintiff* gives up to the *malâ fide* defendant, armed with delay, put into his hands by his learned partners, value to any amount, viz. to whatever can be agreed upon, with extortion on the one part, and distress on the other, to settle the account.

III. The third and last remaining mode of termination is by *reference*. Reference is either to one *referee*, agreed upon on both sides, or to two or more referees, called *arbitrators*, named, one or more, seldom more than one, on each side.

Referees may be either lawyers, or non-

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lawyers: lawyers, very frequently:—whether most frequently or not, is more than I can take upon me to pronounce: it is among the thousand things in and about law, worth knowing and not knowable.

In this case, this is what a man gains by having recourse to technical procedure; to that which by courtesy passes among lawyers by the name of *justice:* — the advantage of finding himself, at the end of the suit, in the same situation as he was at the commencement of it, always excepting what concerns the delay, vexation, and expense: — licence to obtain justice, if he can, at the hands of non-lawyers, or lawyers — after paying for it, and not getting it, at the hands of lawyers.

Does your Lordship feel any such curiosity, as that of knowing the number, absolute and relative, of these causes in which justice is paid for, and not done? In your Lordship, *will* is *volition*, clothed and armed with *power* — in me, it is bare *inert velleity:* — meantime accept at my hands what chance presents to them: —

Times Newspaper, 16*th December* 1806.— "Yesterday morning, in the Court of King's Bench, Guildhall, *eight* causes for *special* juries appeared on the list for trial. They were *all* referred: in one only, a verdict was taken, *pro formâ*, for the plaintiff."

The whole number without exception — in all of them justice *paid for* — in all of them justice *denied!* This, where time for trying them, for pretending to try some one of them at least, could not be wanting. Sent off untried? For what reason? To all appearance, because, in the instance of each such cause, there was something in its *complexity*, and thence in its *length* or *intricacy*, that rendered it incapable of being so tried, even by select men, men of cultivated minds, to any good purpose. The causes, *London* causes, and those *special jury* causes; therefore *mercantile* causes of the *higher* order: — causes naturally attended with a large measure of complication.

Here, no want of time: the causes therefore capable of being tried, one or more of them, that same day, howsoever badly. How then must it be at the assizes? — where, to any degree of complication, and thence of *prudential* impracticability, is so frequently added absolute *physical* impracticability, through denial of necessary time.

In another case — the date of which I must beg to stand excused from mentioning — while the pleadings are opening, counsel for defendant proposes a reference, which the plaintiff, being present, at length assents to. A referee, really above all exception, and *pro hâc vice* a non-lawyer, is agreed upon. The noble and learned judge, having perused the pleading, certifies them to be very intricate, highly approves of the reference, and declares that it *does credit to the counsel on both sides.*

The virtue of *candour* — your Lordship sees (for, if this be not the proper name of the virtue thus displayed, I must confess my inability to find for it any other) — the virtue of *candour* (for this is the virtue I have heard named a hundred times on similar occasions) — in short, whatever the virtue displayed on this occasion was, — was displayed by learned gentlemen: and, lest virtue should fail of its reward, the praise of this virtue, whatever it was, was, with accustomed *liberality* (virtue for virtue,) bestowed upon them by the noble and learned lord.

My Lord, though of my own knowledge I know nothing respecting the correctness of this account, I should find no sort of difficulty in crediting it. In the state of things in question, it is natural that learned gentlemen should display such virtue: it is natural that learned lords should bestow such praise on it: not unfrequently has it happened to myself, to hear like virtue rewarded with like praise. Without any loss of fees, the whole body of learning, lord and gentlemen together, gains so much *ease:* the whole body of learning goes so much the sooner to its dinner. Ever and anon, learned gentlemen, one or more of them, acquire the faculty of displaying other virtues in the character of *referees:* the virtue of *justice*, in the award when made: the virtue of *patience* (for fees *de die in diem* are no slight pledge of patience) by the care taken not to be precipitate in making it. The whole body of learned gentlemen acquire ulterior chances for ulterior displays of virtue: by motions for *setting aside* the award when made: by motions for *attachment* for non-performance of it: — two species of *motion-causes*, setting out from opposite sides, but meeting at the same point.

Here, then, we see a species of judicature, of which the distinguishing characteristic is the being altogether inapplicable in *effect*, in a large proportion of the instances in which it is applied in *demonstration* and *pretence:* a feature of deformity altogether without parallel in the worst mode of judicature that can be found in the same country or any other. And this is the species of judicature, which, in a plan of reform, it is proposed to introduce, and without any change, into a country as yet unvexed by it.

Day by day, this mode of judicature is seen to stand in point-blank repugnancy to the ends of justice: practicable, only in demonstration and grimace: impracticable, prudentially, and even physically, in effect. In every such instance, the real effect of the institution is to serve the partnership, and particularly in the higher branches, in the character of a false pretence for receiving money — receiving without earning it.

But the oftener the repugnancy is brought to view by experience, the oftener this pillage

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is repeated, the more abundant are the occasions on which this meed of praise is earned on one part, bestowed on the other. The murmurs of suitors are drowned in a *concert of praises:* a concert, in which lawyers, all *amateurs*, are sole *performers:* a concert performed *by them*, for their own *benefit*, and at the *expense* of justice.

I speak not here of the cases, numerous and extensive as they are, in which the jurors are mere *puppets*, their minds no more applied than that of the Emperor of Morocco to the decision given in their name: — *Special verdict* found *for them* by learned gentlemen, jurors contributing nothing but a stare: — verdict taken *for them* on this or that one of half-a-dozen or a dozen *counts;* said counts all lawyers' lies but one: — one of the twelve taken in vision out of the jury-box, that the absence of the plaintiff, who stands before them, may be recorded by order of the judge — (Alas! I was confounding — though in perfect innocence — lie with lie; — *withdrawing a juror*, to make a drawn battle; and *calling the plaintiff*, that, by saying *I am not here*, he may, under the loss of that cause, console himself with the prospect of losing another.) These, with instances in plenty that might be added — more apposite, more impressive, if they were worth looking for — would, if detailed, make it necessary for me to attempt to drag your Lordship's conception, along with my own, through the filth of *fiction:* — and sufficient to the day is the evil thereof.

To those whose love for the system rests on the imposture mixed with it, all this appears right and proper: the appearance of a jury, and the people deluded by it, which is all that is wanted. But *my* jurors, my Lord, are not *puppets*. I wish not to trouble them often; but when they *do* come, they come for use, and not for show.

All that mockery would vanish of course, were the cognizance given to the jury reserved, as proposed, for the *second* instance.

On this occasion, a word or two more may perhaps be not ill bestowed on the practice and power of *investigation*. In natural procedure, there being no bars to shut it out, it takes place (your Lordship has seen how,) of course.

Without any special authority (for there needs none,) every justice of the peace exercises it, whether sitting out of general sessions, and thence free from technical trammels, on matter submitted *definitively* to his cognizance, or carrying on, under the statute, a *preparatory* examination in a case of felony. Under the like liberty, every *committee*, and every *commission* of inquiry, pursues, for the discovery of truth, the same necessary course: — pursues it, through any number of intervening links or channels; regardless (nothing calling for regard) of the difference between this less direct, and the more direct or immediate mode, of obtaining *ultimately-employable* evidence.

The case is — that it requires art and contrivance—science and regularity—to bereave the hand of justice, of an instrument at once so natural and so necessary.

Such ingenuity is not wanting to *English-bred* technicalism. The effect is produced by confining the efficient part of the course of procedure within the compass of one single sitting. A, who knows nothing, indicates B, who knows everything. But before B can be so much as sent for, the jury-box is emptied.

As little is it wanting to *Rome-bred* technicalism. A, who knows nothing, indicates B, who knows everything. No want here of *time:* sittings in any number: judge's pay — (for an examiner or examining commissioner is a judge) — judge's pay *per diem;* other learned persons' pay *per number of words;* words and sittings consequently not scarce. — A, who knows nothing, indicates B, who knows everything. But the scene lies in the judge's whispering-closet: from which all who have any interest in the discovery of the truth are carefully excluded. The persons to be examined are predetermined: and, by the solemnity of an oath, the seal of secresy is applied to the lips of the judge. — A, who knows nothing, indicates B, who knows everything. But B, who knows everything, is unknown to the persons without whom he cannot be had.

Such being the imbecility of the *trunk* (I speak of *Rome-bred* procedure,) such is it in *four* at least of its *branches:* — *Continental* law in general: — English *equity* law: — English (coinciding in this point with continental) *spiritual* law: — English (coinciding with continental) *admiralty* law.

If everywhere the hand of justice labours under this palsy, it is because everywhere she has found such regular-bred practitioners to tie up the nerves.

An occurrence, that happened not many years ago — one of a thousand that are happening every year — may help to place in broader light the two *companion pictures* — of *real* justice, in her native vigour, and *sham* justice, in her *straight waistcoat*. — A man dropped out of his pocket bank-notes to the amount of about £500. They were found by another man, who, being poor and illiterate, was unconscious of the value of his prize. The value opening to him by degrees, he fell into negotiations with Jews and Gentiles, and disposed of it, or a part of it, at an under value. It was a case for *trover:* out of the multitude of instances in which the action so denominated is brought, one of the very few in which it can be brought without a lie. No one to make oath of felony, or cause of suspicion of

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felony. No felony, therefore no legal ground for examination by a justice of the peace. But among *unlearned* judges in general, and among those of the London police in particular, strange as it may seem to *learned* ones, there does exist a sort of principle or whim, whatever be the proper name for it, called *the love of justice*. It is by this principle, or this whim, that they are led, on such a variety of occasions, to "do good by stealth,"—your Lordship will see how: and as they never find it "fame," that being a monopoly in the hands of their learned betters, whatever is done by them in that way, is without any expense to any body in the article of "blushes." In the particular instance in question, at the Queen-square police-office, *Mr. Colquhoun*, hearing of the loss, took the business in hand: and, laying about him, with his so well known activity, in this irregular way—hitting the mark by pushing in *quart*, where *learning* would have missed it by pushing in *tierce*—got back for the loser his £500, except a small part that had been spent. From link to link, he followed up the chain of information, as if it had been by an examination, carried on under the statute in a case of felony. *Warrant* none, there being no legal ground for any such coercive instrument: no witness convened but by a *summons;* to which, had the impotence of the technical system, to this, as well as so many other good purposes, been known, no regard would have been paid. Fortunately for justice, poverty, or simplicity, or terror, withheld the confederates, one and all, from applying to an attorney. If justice be a friend to man, the omission was fortunate: since it is to that she owes that technical judicature, or its terrors, did not tie up her hands.

All the learning in Westminster Hall, armed by all its power, would not have got for the man a single farthing of this £500. The finder, with the money in his pocket, would have moved off, or spent it, or shifted it from hand to hand. To the loser, *the best thing* that could have happened would have been, to be apprised *in the first instance* of the impossibility of recovering the money, and so to have sitten down quietly with the loss. *Another result* would have been, the commencing the action, and for want of that power of *investigation* which in a civil case *technical* procedure does not give, *suffering a nonsuit*, or *judgment as in case of a nonsuit*, with three or four or five score pound to pay, for costs on both sides. Another, and still worse misfortune, would have been the *getting a verdict*, and thereupon, by a sort of a vehicle called a *writ of error*, find himself set down, and then hung up, in a place called the *Exchequer chamber*, where he would have had *a year* to cool his heels, while the finder was spending or securing the remainder of the £500:—deducting, *inter alia*, for merit crowned with learning and nobility, a slight retribution, of which *Lord Ellenborough* can give your Lordship a much more particular account, than it is in my power to do at my humble distance. But of this in another letter, in which your Lordship may take a nearer view of the difference between the *love of justice* and the *love of fees*.

As to Scotch judicature, though another twig of the old stock, I should hope to find that, somehow or other, she has escaped this palsy; or, at the worst, that it has its intermissions. No jury: therefore no necessary compression of a trial into a space of time incapable of holding it. At Edinburgh, the *Lord Ordinary*—that is, not he, but a *clerk*, or a *clerk's assistant* (*Lawrie*, p. 110,) takes the evidence; and, if he proceeds in the manner of the *Lord Ordinary on oaths and witnesses*, he admits "parties and their advocates" to be present (*ib.* 105:) and in the country "before commissioners, the depositions are taken (*ib.* 107) in the same manner as before the Lord Ordinary." Though learned lords know better than to allow, to any such one of their deputes to whom they intrust this vital part of judicature, the faculty of pronouncing any decision, on the evidence that nobody but himself has heard, or will hear—his door (I see) is not always shut against parties, or at least not against parties' lawyers; and, seeing no limit to the number of his sittings, the conclusion I draw is—that when A, who knows nothing, indicates B, who knows something, it may happen to B, in that event, to be heard.

Diligence, Scotico-jargonicé, means, *inter alia*, an order to a man to appear in the character of a witness: for among Scotch, as well as English lawyers, it is a rule, that when a word in use among the people is employed, it may be employed to mean anything but what the people mean by it. *Diligences* are the nets employed in Scotland to fish for witnesses; and, seeing nothing to hinder but that, from the beginning to the end of the career of *factitious delay*, *diligence* may follow upon *diligence*, I see nothing to hinder but that when it happens to an ignorant witness to have pointed out a knowing one, the knowing one may be heard.

But, under the management of your Lordship's learned reformer, English is to be the model of Scotch justice:—Juries, for ever! and in the true English style! And thence comes my apprehension, that, either for want of thought, or from thought twisting itself to the sinister side, this palsy may be inoculated into Scotch justice, along with so many others from the same source.

Thus stands the matter, in respect of the provision made for the discovery of sources of evidence as yet *unknown*. If, in this de-

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ficiency in the system, the situation of the authors considered, there appear not much cause for wonder, there will appear still less, when it is observed how, by another of its vices, sources of evidence *already known* are exposed to perish without remedy. During the six or twelve months, or any greater number of months, of the factitious and unabridgeable delay, fortune is not always idle. A necessary witness, whose testimony would, under the natural system, have been collected the first day — this necessary witness (suppose) dies: thereupon, along with him, perishes the plaintiff's or the defendant's right: — for in all that time, the system has afforded no possible means of preserving his evidence.

For the relief of this disorder, under English law so carefully inoculated and nursed by one sort of lawyer — the common law judge — up comes another sort of lawyer — the equity judge — with his sham remedy: bill in equity for examination *in perpetuam rei memoriam*, or examination *de bene esse*.

In both these instances, a previous suit in equity is necessary: — with its attendant train of *extra delay, vexation, and expense*.

In both instances, the evidence is *collected* in the *bad mode* — put into the *bad shape* — attached to that modification of technical procedure: — with its attendant danger of *misdecision*.

In the case of the examination *in perpetuam rei memoriam*, the suit has no other object: — and, admitting of no decision, ends when that object has been obtained, or found unattainable.

In the case of *examination de bene esse*, a suit having an ulterior object being already instituted, the effect of the application for an examination in this *mode*, or rather upon these *terms*, is only to procure the examination of this or that witness to be *accelerated*; — performed before the defendant's *answer* has come in, though not before he has *appeared* (*i. e.* without appearing, has submitted to employ an attorney in his defence;) — performed at that *premature period*, antecedently to the stage appointed by the general rule for the examination of *all* the witnesses.

In both cases, there is a chance — but, on this occasion, it were far too much to undertake to explain what chance — that the evidence so collected under the authority of a court of equity may come to be employed in a trial at common law, and laid before a jury.

But in neither case can it be so employed, unless the witness so examined be, by death, or perhaps by incurable infirmity, disabled from attendance. Moreover, in both cases, besides that this remedy, even when admitted to be applied, is thus inadequate, and no less apt to afford aggravation than relief, so scanty is it in its application to the field of law, as to cover but a small fragment of the extent of the demand.

No such remedy, where the *person* of the plaintiff, or of any one else, through whose person *his* mind is wounded — none where his *reputation* is the subject of the injury.

No such remedy, where, the subject of the injury being this or that individual article of specific moveable property, the injury consists in *destruction* or *deterioration*, the result of negligence or malice.

No such remedy, in a word, beyond the comparatively scanty range of *equity* jurisdiction; of the imperfection of which, in point of extent, this sample may serve: for, as to the marking out its limits, a mystery, which remains such to the most learned eyes, will not be undertaken to be revealed, especially in a parenthesis, by this unlearned hand.

But, even within this narrow range, it may be a question, whether, upon the whole, justice, so far as jury-trial is concerned, is anything the better for it.

Excepting (for special reasons, too special to be here detailed) the case of a *will*, the validity of which it is meant to secure against dispute — without some apparent danger of death, as likely to ensue before the witness can be presented to a jury-box, a man will not be apt, even where equity and common law join in allowing it, to betake himself to so expensive a security. Were such precaution natural, the use of it would be general, in all cases in which the importance of the cause presented a warrant for the expense. The case of a *will* (as above) excepted, the use of this security is in a manner confined to the case where imminent danger is certified by old age or particular infirmity.

The suitor, then (say the plaintiff,) having notice of the indisposition of the witness, if so it be that he has law and reflection enough to be aware of the peril that awaits him, repairs accordingly to his attorney. The scene lying most probably in the country (the country containing seven or eight times as many inhabitants as the metropolis) while he is occupied in procuring an *interview* with the *attorney*, or the attorney in *corresponding* on the subject with his *agent* in town, and the one or the other in *drawing instructions* for the bill in equity, and counsel in town or country in *perusing* and *settling* the *bill* or *drawing the interrogatories*, or the agent in town in performing the operations preparatory to the taking out the *commission* for the examination of the witness, or while the commission or the commissioners are upon their *travels* — the patient dies, or loses his recollection, or does not choose to be disturbed, on the subject of a dispute which to him is a matter of indifference: — not to mention that men are apt to die at short notice, that a disorder which proves mortal is not always

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at the outset known to be so, and that it does not necessarily follow, that because it happens to me to stand in need of a man's testimony, his manner of life, and the state of his health, lie all along within my knowledge.

Of this incidental *equity suit*, thus to be squeezed into the belly of a *lawsuit*, the certain expense is, in the greater number of instances, greater than the whole value in demand in the lawsuit: greater not only in the majority of the suits that *would be* instituted under the *natural* system, but in the majority of the suits that *are* instituted under the *technical* system, notwithstanding the exclusion put by it upon so great a majority of suits and suitors.

Of this incidental suit, the *costs* on one or both sides are borne by the party whose misfortune it is to stand in need of testimony thus circumstanced: and this not only in the first instance, and while as yet it is unknown whether his demand be just or no, but even after the definitive judgment given, and the justice of his demand established by it.

If the patient recovers, in such manner that his testimony is capable of being delivered at the trial, so much the worse for the party who stands in need of it: for in that case the testimony must be collected on this second occasion in the only mode in which it ought to have been collected on any occasion, and the expense of collecting it, including travelling expenses, *demurrage*, and so forth, is repeated.

All these considerations laid together, it would be matter of satisfaction rather than regret, should it be found, as I am confident it would, that in comparison of the number of instances in which it might be employed, the instances in which this insidious remedy is actually employed are extremely rare.

In Queen Anne's reign, on the occasion of the act which afterwards passed for the amendment of the law (4 & 5 Ann. ch. 16.) this defect in jury-trial, as then and still constituted — a defect — not in the *composition* of the tribunal, but in the course of procedure anterior to the day on which the cause is brought before that tribunal — came under the view of parliament, and was attested by the recognition of both houses. Under the guidance of Lord Somers, the Lords proposed a palliative, at once inadequate and dangerous: under the guidance of Mr. Pulteney, the Commons rejected, and prevailed upon the Lords to join in rejecting, this palliative, but for reasons, a material part of which operates in condemnation of the still subsisting practice.

The proposal of the Lords (Journals, xviii. 69) was, that "*after issue joined*, in any action to be brought in the courts of Westminster, upon oath made that any witnesses *cannot* be present at the trial, by reason of their *being to go* beyond the seas, or by reason of sickness, or other infirmity; it shall be lawful by rule of court, for the plaintiff or defendant to exhibit interrogatories to such witnesses to be examined thereunto, upon oath, before one of the judges of the said court, or before commissioners to be appointed under the seal of the court; which depositions may be made use of at the trial, in case the witnesses *cannot* be there; and said depositions shall be afterwards entered or enrolled in the said court."

The mischief having its root in the essence of the technical system, no remedy, leaving the basis of that system untouched (refusal to hear parties and witnesses at the outset,) could operate as anything better than a feeble palliative: — but this remedy fell short even of that feeble palliative. A case to which it applied itself, besides the somewhat less exceptionable ground of "sickness or other infirmity," was the case of a design, on the part of the witness, *to go abroad:* a case to which it did not extend was that of *death*. To save himself from the ordeal of cross-examination, a man engaged by corruption *ab extra* or *ab intra* to give false testimony, may feign (and what more easy than to feign, and in a manner not to be detected?) "sickness or other infirmity?" — or, what is much more simple, if it be worth his while, he may pretend obligation to go abroad, take a trip from Dover to Calais, and so go abroad on purpose: but to no such purpose will a man either die or feign himself dead. Examination, taken in either of the modes thus proposed by Lord Somers, might therefore, if under condition of not being used but in case of *death*, have, comparatively speaking, been legalized with little danger: and in this case, the earlier taken, the more effectual the remedy. But the stage of the cause proposed for taking the examination was — not till *after issue joined;* that is, not till after two, three, or any greater number of months after the commencement of the cause.

Of the body of objections, which operated to the conviction of their lordships (Comm. Journals, xv. 198,) an indisputable part was composed of such as have no force but upon the supposition of the radical impropriety of equity practice: of an essential part of the practice of the court, of which the noble and learned lord their spokesman, the great Lord Somers, was sole judge: the impropriety (I mean) of employing one judge to hear and see witnesses — another, and without the first, to apply their testimony or supposed testimony, to its use: — an impropriety most explicitly confessed by the Lord Chief-Baron Gilbert in the book called Bacon's Abridgment, title Evidence, vol. ii. p. 625: and which, I have not the least particle of doubt, would with equal frankness be confessed, or rather proclaimed, by Lord Somers's noble and learned

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successor, should it occur to your Lordship to put the question to him across the convivial table.

Meantime, supposing the admission, thus proposed to be given to the testimony in this make-shift shape, had been confined to the case on which, in the most perfect shape, testimony from the source in question is not to be had — on this supposition, the proposed amendment (it is evident) would have been a real improvement: I mean, in so far as it consisted in allowing the application to be made in the common-law court, in which the suit was already lodged. The use of it might in that case, and of course would have been, co-extensive, *in civil matters at least*, with the jurisdiction of the court, in which the evidence was to be employed: and, except the radical inconvenience of committing the decision to a judge, by whom the witness, at the time of his examination, was neither seen nor heard — an inconvenience which, however, cannot always be avoided — the mode of collection would have had, or might have had, in every other particular, the advantages which jury-trial possesses in common with the *natural* mode: — viz. *cross-examination* by or on behalf of the adverse party, with the benefit of *questions arising out of the answers*, and so forth.

But, in this proposed *amelioration* of the *technical* system, whatsoever good there was or could have been, what is it but an *approximation*, and that a remote one, made towards the *natural* mode?

On all such occasions, what care, what tender care on all sides, to avoid seeing the object — the unexceptionable, the perfect system — all the while standing close under their eyes!

In respect of the *occasion* and the *purpose*, correspondent to the English practice of examinations *in perpetuam rei memoriam*, and *de bene esse*, is the Scotch practice of examination of witnesses to lie *in retentis*. But, whereas the jurisdiction of English equity extends over but a part, probably the smaller part, of the field of what, in one of the four or five senses of the word *civil*, is called *civil law*, the applicability of the Scotch practice of taking depositions *in retentis* is co-extensive (I take it for granted) with the jurisdiction of the Court of Session; an authority which, in one way or other, covers the field of civil law in its whole expanse: — not to mention a considerable portion of the field of *criminal* law.

Scotland not being afflicted by any such distinction as that between *law* and *equity* — to the application of this remedy, such as it is, no additional suit in another court is in Scotland necessary: but even *there*, whether, upon the whole, justice finds most matter of satisfaction or of regret in the facility of resorting to it, is matter of *account*, the statement of which is beyond my competence.

In some other place, I propose to myself to submit to your Lordship some sort of *apperçu* of the *price* paid — paid by the people — paid in the several shapes of *delay*, *expense*, and *denial of justice*, not to speak of *misdecision* — for the benefit of jury-trial, at its present *stage*, grafted as at present on the *technical* system; — and for the services rendered by learned lords and gentlemen — to somebody, doubtless, but to whom I cannot find, except to learned lords and gentlemen — by the upholding of that, together with the other branches: — as likewise what are *not*, as well as what *are*, the considerations, by which this popular branch of the *technical* mode of procedure has never ceased to command their eulogy, any more than the *natural* mode their silence. But, fearing to diverge too far from the more immediate subject of this letter, I dismiss these topics for the present.

Having thus submitted to your Lordship the only plan, upon which, in my view of the matter, jury-trial in civil cases can in Scotland be rendered, in any considerable degree, subservient, upon the whole, to the ends of justice, I proceed to consider so much of the proposed plan on this subject, as appears on the face of the *resolutions*.

From the very little that is there stated, what I see distinctly enough is, in what way this supposed remedy against factitious delay, vexation, and expense, if that be among the objects of it, presents a probability of giving *increase* to that aggregate mass of inconvenience: what I am unable to discover is — by what means it presents a probability of making any *defalcation* from that mass.

No particulars being given, concerning the mode in which the several questions of fact are designed to be brought before the jury, to speak of this and that and t'other mode in the character of possible ones, and then to say — this will not diminish delay, &c., nor this, nor that — is a sort of exercise that would be little better than fighting shadows.

What I see beyond doubt is — that, to lay the points in question before a jury, abundance of new formalities must be introduced: what I do not see any probability of, is — that, upon the introduction of this new mass of formality, any such portion of the existing mass, as shall be equal to it, will be cleared away. In England, a cause in which a jury is employed, is sooner terminated (it has been said,) than, without a jury, a cause of the same nature would be in Scotland. Be it so: — but it does not follow, that by the application of jury-trial, even in the best mode in which, under the existing system of technical procedure, it could be applied in Scotland to that same cause, the cause would receive its termination there sooner than it

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does now. In the midst of so much factitious delay, what little abbreviation there is in the English mode, depends upon the *system of pleading* taken in a mass: and I have no more apprehension of seeing the Scotch nation submit to defile itself with any such abomination, than I have of seeing the port of Leith opened, for the importation of a pack of mad dogs, or for a cargo of cotton impregnated *secundum artem* with the plague.

In English pleading, what little abbreviation — defalcation (I mean) from factitious delay — what little abbreviation of that sort there is — and that purchased at the expense of intelligibility and cognoscibility, speaking with reference to the body of the people — consists in the use of those general propositions or forms of averment, on the part of the defendant, called *general issues: — not guilty; — non-assumpsit*, and four or five more; some of which include others, so logically have they been framed. But these propositions have not, any of them, any meaning, but in the way of reference: and their meaning varies *ad infinitum*, according to the object to which they are referred: — it varies, according to the *genus* of the action, as characterized by the *declaration* (the instrument of *demand* exhibited on the part of the plaintiff,) and the *counts*, the *specific* demands and allegations contained in it. *Not guilty*, for example, the most changeable of all these *Proteuses*, involves two clusters of propositions, which are altogether different, according as the action it applies to is an action of *trover* or *ejectment*. In one of the instances it entitles the defendant to prove, by way of defence, one or more of *one* list of facts; in the other, one or more of *another* list of facts, and so on: lists tolerably well settled (viz. among lawyers) for ordinary purposes, by arbitrary, and absurd, and inconsistent decision, but altogether undiscoverable by the light of common sense, and thence incapable of being understood, even by the enlightened part, of the body of the people.

The *two general issues* here mentioned, corresponding to *three formularies*, or *genera of actions (non-assumpsit* corresponding to the action of *assumpsit)* are mentioned, because under one or other of these actions, but in by far the largest proportion under *assumpsit*, nine tenths at least of the whole number of causes, commenced in the regular way in the common-law courts, would be found to be comprised.

But it is to the use of these *abbreviations*, one advantage of which (professionally speaking) is, that they are so frequently found to stand in need of *re-dilatations*, under the name of *papers of particulars* (with fees for the same,) that everything that savours of *dispatch* is confined in English practice: and this jargon, unless, as in British India, planted by the bayonet, being incapable of taking root in any other than English ground, along with it vanishes all the advantage, looked for, or pretended to be looked for, on *that* score.

But this prop, in the character of a *technical support* for the jury-box, being thus found eaten up by the dry rot, there remains no other regular common-law support than that, the rottenness of which is conveyed to every ear by the name of *special pleading:* a mass of corruption, on which a stigma is regularly imprinted — I will not undertake to say exactly how many times — some dozen of times at least — every year, by the hand of the legislature: — as often, I mean, as allowance is given to plead the *general issue*, and give the act in evidence.

Remain (it may be thought) for *supports* to the jury-box, the *papers of particulars* above alluded to, or whatever else, under the name of "*relevant facts* alleged in the summons or other writ," &c., or "admissions or denials thereof," may be proposed to be substituted to them on Scottish ground. But these, so far at least as they extend on English ground—the only ground on which they have ever been placed — are but fragments of a *new* system of *special pleading*, already dry-rotted, serving no other purpose so assuredly and so completely, as that of a certificate, bearing witness to the rottenness of the old.

Call them (these conflicting masses of allegation) — call them by any name — English or Scottish — *counts* and *special pleas* — or *counts* on one side, with papers of *particulars* on either or both sides; "*summons*" (with the *libel* in it) on one side, "*whole defences*," distinct or indistinct, on the other — the same religious care is observable, on both sides of the Tweed, to prevent their cutting the thread of the suit too soon — to prevent their answering any other purposes, to the prejudice of the *ends of judicature:* — the same effectual care to shut out that simultaneous, reciprocal, complete, and correct explanation, which nothing but the presence of both parties facing each other under the eye of the judge, can give — to prevent the stemming of that torrent of learned and indefatigable *mendacity*, which spreads such fertility over the ancient demesnes, attached to *inns of court* and *colleges of justice*.

Another *support* indeed, capable of being provided, is *a suit in equity:* as where, in the language of English equity, an *issue* is said to be *directed*. Upon the hearing of the cause, on the ground of the mass of evidence already delivered in another shape, the comparative untrustworthiness of which is thus recognised, an allegation or set of allegations are fixed on, and, by the help of a *lie*, dictated by the judge, the *truth* of it is sent to be inquired after, on the ground of testimony, delivered in that more trustworthy shape, in

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which alone (except now and then in a case of necessity) it is ever suffered to be presented to the jury-box.

To the adoption of this basis, no objection on the score of probable repugnance seems opposable. Unfortunately, by the same causes, and in the same proportion, as the *practicability* of it is increased, the *utility* is diminished. The cause is first to be tried in some one or other of those bad modes, to which, in consideration of their acknowledged badness, jury-trial is proposed to be substituted: under the name and notion of a substitute, jury-trial would, on this plan, be erected as a superstructure, on an edifice, the immoderate bulk of which is the very subject of complaint.

At the end of a course of *special* pleading, in the *original* mode, the points in question are somehow or other brought to an issue, without the application of any such instrument as *human reason*, on the part of the judge. In the new-invented mode, by papers of *particulars*, the use of that instrument, in that learned hand, is, or at any rate might (I should suppose) be, alike spared. But, in the case where an *issue* is *directed*, nothing that is to be done being predetermined by any pre-established forms, whatsoever *might* by possibility be done, in practice nothing ever *is* done, without a previous settlement of the *tenor*, the very words, of the issue, under the eye of a judge. This function — being, like so many other of the most essential functions of judicature, beneath the dignity of so great a personage as the *judge* so called — is turned *over*, that is, turned *down*, to a subordinate sort of judge, called a *master*:— more delay, more business, and more fees.

This practice of directing issues, were it imported into the port of Leith, the same incompatibility with superior judicial dignity would — though not necessarily, but too naturally — be imported along with it.

Meantime, this operation of *directing an issue* or *issues* is not materially different from that which *my* judge would have to perform, in the case where jury-trial were called for by either party, after a decision pronounced in the character of a definitive decision, by himself. And, unless the instances, in which, under the existing practice, reference is thus made to a jury, are much fewer than they ought to be (which, under the recognised enormity of the addition to the expense, may not improbably be the case,) your Lordship may conceive by anticipation, how few the instances would be, in which, on my plan, the *good men and true* of Scotland would find themselves saddled with this burden, in comparison of the instances in which they would have to submit to this vexation, on any plan which the learned reformer could approve.

One actual, and therefore possible, though even rarely exemplified, technical substratum for jury-trial (I am sensible,) still remains; and that is the sort of cause, to which, finding no name *in use* for it, though in every technical court they are heard every day in swarms, I have been obliged to *make* a name, and call it a *motion-cause*; a cause carried on upon no other than the favourite sort of evidence already mentioned — *affidavit* evidence. *Petitions* to the Chancellor in matters of *bankruptcy* form the most striking — and probably, in respect of average quantity of value at stake, the most important — exemplification: — *petition*, a sort of *motion*, upon paper. In the case of these *petition causes*, an issue is now and then directed; and, even in other *motion-causes*, in other courts, reference has been known to be thus made to a jury, though much more rarely.

But, to the working after this model, there are two objections: one on the ground of justice and utility, the other on the ground of practical probability of adoption.

On the ground of *justice and utility*, the objection is — that, under *this* mode of trial, the encouragement to *perjury* is so great, that the facts, capable of being extracted out of the mass of testimony for the purpose of being taken for the subject of the issue, will be liable to be concealed or overwhelmed, by the mass of false facts advanced, under the protection afforded by that mode of trial against the scrutinizing power of *counter-interrogation*: not to speak of its *dilatoriness* in comparison of the *natural* mode, and its furnishing no witnesses but *willing* ones. It presupposes, therefore, the universal extension of a mode of conflicting testification, alike favourable to the generation of perjury, and unfavourable to the *direct ends of justice*.

I throw out this objection, rather as matter for consideration, if it were worth while, than as being assured of its not being upon the whole an advantageous succedaneum to the existing system. — But what renders it not worth insisting on, is its failure on the ground of *practical probability*. A *motion-cause*, though, in comparison of a cause carried on under the *natural* system, enormously *long*, is, in comparison of a cause carried on under any other branch of the *technical* system, as conspicuously *short*. It moreover imports a withdrawing of the *mendacity-licence*, and a substitution of a meagre and comparatively close discourse, *purporting* at least to be the discourse of the party himself, to the exuberant and inexhaustible effusions of professional and learned eloquence.

In the case of an *incidental* application, springing out of a cause already introduced and carried on in regular form, such abbreviation may be admitted. But, to apply to the *body* of every cause any such short method,

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would be an infringement of the prerogative of the *college*, a contempt for the wisdom of ages, and a violation of the *act of union*, if not *totidem syllabis*, at any rate *totidem literis*. Indeed, be the occasion what it may, and the arrangement proposed what it may, to be assured of its being a violation of the *act of union*, there needs no more than the assurance of its being a defalcation from the mass of *delay*, *vexation*, and *expense*, and thereby from the reward allowed by the wisdom of ages to learned industry.

Accordingly, it is merely in the character of a *model* already existing in the English *repository*, that I mention this possible *support* for jury-trial in Scotland — and that no article, in the list of these models, may be omitted — and not with any the smallest expectation, any more than wish, of seeing it recommended to your Lordship's notice by your Lordship's learned reformer, or any other learned adviser, for any species of cause; — meaning always *principal* not *incidental* causes.

By what means, therefore, this additional formality is likely to be made to operate in the character of an instrument of *dispatch*, passes my comprehension: but how it may be, and is likely to be, made use of as an engine of *delay*, to that question answers offer themselves in abundance.

Occasion has already presented itself — not surely of informing, but, however, of humbly reminding your Lordship, that there are such sorts of causes as *mali fide* causes. Of the existence of such iniquity, the innocence of the learned reformer, if his language were to be believed, has need to be informed. In the 10th resolution he speaks of *dissatisfaction* — of a party's being "dissatisfied with the judgment of any court," meaning subordinate court: — and proceeds, as if a real dissatisfaction with the judgment of such subordinate court were the only motive, which, in his experience, any man ever found, for making application to a super-ordinate court.

Supposing Scotland to be this sort of Utopia — from the power which he gives to either party, for referring the matter with or without reason to a jury, no very considerable mass of mischief might arise. But in England, as your Lordship may have seen, and will see a little more distinctly a little further on, we have a *chamber*, in which the vermin that spin out such causes are bred in swarms, as lice and fleas are said to have been bred in Turkish hospitals, and nurseries, founded and stocked for the purpose: and one of his improvements, as your Lordship will see presently, consists in the building of just such another receptacle at Edinburgh, spick and span new.

Admitting, then, the existence of the breed of *malâ fide* suitors, without which his nursery for them would be without inhabitants — your *malâ fide* defendant, for example, with another man's estate or money in his hands — admitting the existence of this best sort of customer, observe, my Lord (but I think your Lordship will not be *pleased* to observe,) in how many shapes nourishment is provided for him, by these four *resolutions* about juries.

He forms his calculation; and, if mesne profits, or interest of money, promise to outweigh the eventual addition of expense — or without any such trouble of calculation, if his affairs be desperate — after all anterior sources of delay are exhausted, taking care to wait till the last moment, he flies to *resolution* the 6th, as to the horns of the altar, and calls for his share in this new-imported stock of English liberty.

If, as per resolution 7th, "that part of the country where the evidence can be most easily obtained" happens fortunately to lie within the range of a circuit, and the commencement of that *race against time* happens to be, or can be made to be, at a convenient degree of remoteness, the further off the point of time, so much the better for *mala fides*.

Moreover, the principle of *circumgyrating* justice, consisting in the allotment of a limited quantity of time for an unlimited quantity of business, another chance he thus gets into the bargain is — that of finding, that when the cause has got to the circuit town, there is no time for trying it as it should be; whereby he gets the benefit of cross and pile: — or there is no time for trying it at all; whereby he gets either the benefit of a further respite to the *next circuit*, or that of finding his adversary content to give up half his right, rather than see the other half exposed to further perils.

Is it a cause that has taken its commencement in *Shetland* or the *Orkneys*? — a cause about a hovel, for example, or a few yards square of potatoe-ground adjoining to it, or the boundary between one such scrap of ground and another? — he lays hold on resolution the 8th, and up goes the cause to Edinburgh, and there breeds another cause, the object of which is to know, whether the Court of Session there shall or shall not think fit, that when the cause is got back again so far in its way to Norway, it shall receive the benefit of its share in the new imported stock of English liberty.

And note, that the power, of thus giving exercise to the faculty of *locomotion*, may be no less useful in the hands of a *malâ fide* suitor on the plaintiff's, than on the defendant's side.

As for example — in a situation like Lord Selkirk's, should it happen to a man to be actuated by a disposition, such as nobody can be further than I am from meaning to attribute to that noble lord, it might not be unworthy of your Lordship's consideration, how

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much might be done in such hands towards ridding the country of its superfluous population, by actions judiciously introduced into the local subordinate court, and thereupon set to vibrate, as above, in an arc of 200 or 300 miles length, between the subordinate court and the super-ordinate.

Over and over again I have had, or shall have, occasion to confess, that were there any such instrument as a *speculum mentis* that would suit the purpose, *astutia*, rather than innocence, is the state in which I should expect to find the learned reformer's mind: should this conception, on the other hand, be erroneous, it may be of real use to him — in his office or in his profession—to be informed, what wicked people there are, in this wicked world.

The mention made in resolution the 6th and resolution the 9th, of the Lord Ordinary's court (in the Outer-house) and the court or chamber (meaning, I presume, the correspondent Inner-house,) reminds me on this occasion, as on so many others (of which hereafter) of the enigmatical and mysterious state of that court, which is at the same time *two* and *one*. Our *malâ fide* suitor, when, with the help of one jury or succession of juries, he has exhausted the stock of delay purchasable at the Outer-house, is it proposed that, with the help of another jury or like succession of juries, he shall be admitted to the purchase of a fresh stock in the Inner-house? and this in the two cases — of the causes breaking out of his lordship's hands and getting into the Inner-house (viz. by *reclaiming petition*,) whether he will or no, and that of its being gently wafted thither by his diffidence; viz. in that easy sort of vehicle, called a *great avisandum*, in the construction of which his lordship shows a degree of expertness so far above the comprehension of any English judge? These are questions, to which, from the first, an answer *may* have been provided, though, upon the face of the *resolutions*, no trace of any such thing should be to be found.

As to resolution the 9th,—relative to causes brought on in an *inferior* court, including the country courts at all distances, — whether it be considered in itself, or confronted with resolutions the 6th and 7th, relative to causes brought before the Court of Session in the first instance, it calls, in my view, for questions and observations more than one.

When, under resolution the 8th, proofs having been allowed in a court in the *Orkneys*, application is made from the Orkneys to *Edinburgh*, for trial by jury, *where* is it supposed that the trial will take place? — in the Orkneys, from whence the cause came, and where most probably the residences of witnesses and parties are — or at Edinburgh?

In the case where the cause is brought before the Court of Session at *Edinburgh* in the first instance — in that case, by resolution the 7th, the idea occurs (I perceive) to the learned reformer, that there may be one part of the country in which "evidence may be more easily obtained" than in another; and power is accordingly given to the Court of Session, to place the scene of action in that venue. But, to the case where the cause is in the first instance brought before the country court in the *Orkneys*, this power is not extended. Had resolutions the 7th and 8th changed places, this doubt would have been removed: but, whatsoever may have been the cause, the monopoly of this benefit seems to have been intended for the suits commenced at Edinburgh: suitors, perverse enough to wish to have justice administered to them near to their own homes, not being thought worthy of it.

True it is, that, for aught I know, the intention may have been, that when a cause, which from the *Orkneys* has *ascended* to *Edinburgh*, has *re-descended* to the Orkneys, receives the benefit of jury-trial, it shall not be at any *circuit* court, but at the *stationary* court from which it came: I mention this, therefore, not as matter of opinion on my part, but as matter of doubt.

Be this as it may, if I comprehend the matter right, my Lord, suitors who wish to receive justice, without being sent 200 or 300 miles for it, are a bad set of people: their wish is to cheat superior merit, the exclusive growth of the metropolis, out of the reward so richly due to it: — the practice of bringing causes before these paltry little courts is accordingly a bad practice, and ought to be discouraged. Else why is it that, when a cause is brought in the first instance before one of those petty courts, neither party can have the benefit of jury-trial, without trying the cause first at Edinburgh, to know whether it shall be tried afterwards in the jury mode, in the Edinburgh court, there or elsewhere? — to be tried, viz. in the court it came from, or in the circuit court, or in God knows — and perhaps the learned reformer knows — what other court? while, if the plaintiff has but the sense to commence the cause in the proper place, in the only place in Scotland where any sort of cause ought to be commenced, to wit, at Edinburgh, where persons of superior learning and merit may extract their due out of it, he, as well as the defendant, may put themselves in possession of this new and matchless benefit, each of them at his own will and pleasure, without being beholden for it to the Court of Session, or anybody else, and without being obliged to join in the trial of a preliminary and additional cause, as above.

In England, centuries ago, these little country reptiles were either swallowed up, or

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sucked dry — nothing left but a husk — by the great serpents in Westminster-Hall: — the wisdom which gave success to the design was, if I mistake it not, a prototype, and perhaps a model, to this the learned reformer's grand scheme of reformation.

All this while, lest injustice be done to jury-trial, and a matchless remedy put upon the list of pure poisons, let it not, my Lord, be forgotten, that in jury-trial all this crabbedness is not innate, but comes of its being grafted upon a cankered stock, instead of a sound one: upon the *technical* — and, in particular, upon the Scotch branch of the technical — instead of the *natural* system of procedure.

And moreover, in respect to *removal* in general — removal for whatever purpose, and under whatever pretence — if it be so well adapted as at present it appears to be, to the convenience of the *malâ fide* suitor, it would not be so in the smallest degree, under that modification of the *natural* system, which I propose to submit to your Lordship, in the *Facienda*. If it is so now, it is only because (as I proceed to state in my next letter) learned lords and gentlemen find it convenient to have it so: finding, in the *malâ fide* suitor, for whatsoever stock of *delay*, *vexation*, and *expense* they can contrive to manufacture — in the *malâ fide* suitor (the *latent* though not *dormant* partner in their firm,) besides a partner, their best sort of instrument, and in the mode and conditions of *removal*, one of their best channels of conveyance.

On this occasion I know not whether there be any adequate use in hinting, that, of the two modifications, of which misdecision on the part of a jury is alike susceptible — viz. misdecision which calls for *reversal*, and misdecision which, respecting quantity only, calls only for *modification* — viz. *augmentation* or *diminution* — (say, misdecision *pro toto*, and misdecision *pro tanto*) — the eye of the learned reformer seems to have pitched but upon one. A verdict requiring correction — for example, on the score of *excessive damages* — and given without any direction from the judge, or against his direction — was it considered, and meant to be included under the description of a verdict given contrary "to evidence?"

But the occurrences — specified as above, in the character of fit grounds for *new trial* — are they *all* that required to be thus specified?

1. *Vicious composition* of the *jury*, — by the admission of a juror who had gained admission by *fraud* after his disqualification had been pronounced —

2. *Mistake* or *misconduct* on the part of the *jury*, — in giving a verdict contrary to evidence, or contrary to the *direction* of the judge respecting matter of law — or in giving a *general* verdict, the judge requiring a *special* verdict, or a verdict subject to the opinion of the *court* — or in deciding by *lot* —

3. Notorious *partiality* of a *juror*, — evidenced, for example, by previous declarations on his part, of a determination to cause the verdict to be given in favour of one of the parties —

4. *Mistake* or *misconduct* on the part of the *judge*, — in *excluding evidence* that ought to have been admitted — or in *admitting evidence* that ought to have been excluded — or in giving an erroneous *direction* respecting the matter of *law* —

5. On the part of the *evidence*, a deficiency on one side — whether produced by *fraud* on the opposite side — by pure *accident* — by *misconception* or *neglect* on the first side; viz. on the part of the professional agents of the party on that same side —

6. *Absence* of any other of the *dramatis personæ* whose presence was regarded as necessary — as, for example, of an advocate on one side — the absence produced by *fraud* on the opposite side —

All these have, in English practice, been sustained as grounds for the allowance of a *new trial*.

These, in the course of about a century and a half (the time during which the practice of granting new trials has been in use,) have been brought to light, by the fortuitous concourse of the parent atoms of litigation: more, for aught I know, there may be, though I should not expect to find many, presenting an equally good title, but as yet lying unextruded in the womb of time. Were it to present any prospect of being of use, I know of *one* hand at least, by which, weak as it is, the labour of exploration would not be grudged. On this as on so many other occasions, analogy, if properly commissioned, would, in the course of a few days or hours, produce in useful abundance cases calling for regulation, and regulations adapted to those cases.

But it is among the maxims of learned policy, that all such *anticipations* are an injury to the profession, and as such ought to be discountenanced: — that the only fit shape for law to appear in, is that of *ex post facto* law: — that providence is rashness: — that punishment, especially when without delinquency, is better than prevention: — that legislation is usurpation upon jurisprudence: — and that to shut the stable door, before one steed at least has been stolen, is defrauding thieves and lawyers of their due.

From this cause it is, among others, that cases — which to so vast an extent might, by the light of analogy, be at *once* brought out and provided for — and, by the hand of the *legislator*, in the best mode — are left to be dragged out, one by one, time after time, each time at the expense of many a pang, by the afflicted *suitor*, and provided for, *in the course*

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of ages, by the hand of the *judge* — proceeding in his ever imperfect and insufficient mode.

But to return to the *grounds* for *new trial*. Of the above, upon which English practice has already put its seal, few, if any, would, I am inclined to think, be regarded by a Scotch lawyer as insufficient.

Yet, out of the whole number, two and no more — *contrariety to evidence*, and *misdecision of the judge* — are specified by your Lordship's learned adviser in the *resolutions*. —I have the honour to be, with all respect, my Lord, your Lordship's most obedient servant, JEREMY BENTHAM.

LETTER V.

ON THE BILL CALLED LORD ELDON'S.

MY LORD, — I resume the pen. Times have changed; but the address of these letters shall not change. Your Lordship's was the mark first stampt upon the measure. There I hope still to see it; by me, at any rate, it shall not — by your Lordship, I hope, it will not — be obliterated. Be the *fundator perficiens* who he may, to the character of *fundator incipiens* your Lordship's title is beyond dispute. Be the profit of the piece to the public what it may, your Lordship may claim to the last an author's share.

Your Lordship's edition of it was the subject of the four preceding letters. When the last of them was concluded, the plan of observation I had set out upon wanted much of having been completed. My intention, however, was to have gone through with it, and that intention wanted at length but little of having been executed. But when the text was fully understood to have been laid upon the shelf, the comment could do no less than follow it. Should the text ever find its way again to the carpet, it will then be time enough for the comment to follow it in its course.

Not that the labour bestowed upon the dormant plan is altogether lost. It can be no secret to your Lordship, that, to my humble view of the matter, the tower of judicature was already high enough, and, to all but the favoured few, to whom a golden ticket opens the way, the summit of it sufficiently inaccessible, without any such additional stage as your Lordship's learned architect had planned for it. My intended globe of compression shares, of course, the fate of the fortress against which it was designed to serve. But if, of the stock of projectiles originally destined for that service, it should happen to a splinter or two to glance that way, without prejudice to the new service to which they are now destined, so much the better for economy, and not the worse, I hope, for justice. To us in England, intermediate chambers of review are no novelty. Viewing them at once in the character of shops where injustice, in the shape of delay, is sold to all who will pay the price, and in the character of Mexican temples, polluted by human sacrifices, this feeble hand would regard itself as employed, not like that of Erostratus, but like that of Daniel, if, in addition to the model of the projected Scotch edifice of that name, it were able to consign those antique receptacles of corruption to a consuming fire.

Though always a respectful observer, your Lordship never has found, never can find, in me, a flattering one. Had I a vote, and at the same time no other option than between the plan prepared by your Lordship's learned adviser, and the new one now placed upon the carpet by another learned scribe, howsoever it fared with my wishes, my judgment would find itself obliged to decide — that, in that perpetual competition for public favour, on which, under the best, and, at the same time, the most improvable of all governments, all hope of ulterior improvement depends, the latest bidder has, in the present instance, shown himself the best. Do not let the lot be knocked down to him, my Lord. That, if not on the present, on some future contingent occasion, brought on by some new turn of the wheel of fortune, your Lordship, after being enabled, may be prevailed upon to bid above him, is amongst the objects aimed at by this renewed address.

In the former instance, after a leading step or two, the direction pursued appeared to my weak judgment, such as it was, a wrong one. In regard to this new plan, what I have now to notice resolves itself into this, viz. that after a few uncertain and tottering steps, though the direction be in the main a right one, yet so small is the advance, yards or inches, when furlongs were necessary, that when the moving power is exhausted, the measure will find itself, by a vast interval, short of the proper mark.

The ease and comfort it gave me, not merely to find myself *at liberty*, but, by the nature of the case, *compelled* to ascribe the details and technical parts of the plan to an inferior, and that an unknown hand, was, on the former occasion, represented in my first letter.

Happily, on the present occasion, the same good fortune still attends me. To outward appearance, and in common parlance, the bill which lies before me presents the image and superscription of the noble and learned lord whose seat (to use a flower culled from his own bouquet, of which presently) is "at the head of the" law — the second person in dignity after royal blood — the Lord High Chancellor of Great Britain. As to the actual penmanship, I ascribe it without hesitation to some other, and consequently inferior, hand. The proof is no less simple than

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conclusive. *Legislation* is, in every public station (unless that of the Chancellor of the Exchequer be an exception,) matter, either of mere *supererogation*, and not, in any degree or point of view, of *obligation*, or, at the utmost, of what, according to the distinction so familiar to moralists and jurists, is denominated *imperfect* obligation. *Judicature, i. e.* on the part of a judge (to borrow a term from the same authoritative vocabulary,) "*dispatch of business*," and with the utmost degree of *celerity* which, consistently with *rectitude*, the powers of *decision* on the part of the judge admit of, matter of *perfect* obligation. How far in the highest source of that purest kind of law, which, in the only country that has any conception of it, is distinguished by the name of *equity*, the rate of dispatch is from keeping pace with the demand, is a point that could no otherwise be ascertained in proper mode and form, than from the *register books*, and such other documents as, in either house of parliament, any member who should think it worth knowing whether *equity* gets on or stands still, might command at any time. But that, in a general view, it is such as to present, to the eye of superficial observation at least, symptoms of debility in the extreme — and this whether the standard of comparison be taken from anterior, or cotemporary and collateral examples—is a fact, which, since the time of the chancellorship of Lord Loughborough, has, with little interruption, been rendered but too notorious by the daily lists of causes, as well as by the groans of suitors, and the unvaried cloud that has been seen sitting upon the brows of advocates, whom famine has driven, along with the causes *(corpora cum causis,)* out of the two great *banqueting halls in Palace Yard* and *Lincoln's Inn*, into the great audience hall at the *rolls*. Of this inadequacy of the *supply* to the *demand* for judicature, what the *efficient causes* may be, is a subject of too much delicacy, not to speak of danger, for so weak a hand as mine to attempt to dive into. Whether it be, that in mere spite, the powers which should have been the powers of *harmony*, have metamorphosed themselves into powers of *discord*, and notwithstanding, and even by virtue of, that very discord, entered into a conspiracy to disturb the quiet of the bench, and in the rage of their hunger and thirst after *equity*, to keep squalling and knocking for it at a door, which they deserve not to see open to them: — whether .... But it would be no less superfluous than perilous to attempt prying into *causes*, when the *effects* which, for the purpose of the argument, are so indisputably sufficient, are themselves beyond dispute.

My Lord, what, like an innocent and suspected *queen*, I have been thus long groping for blindfold, in a labyrinth composed of red-hot ploughshares — what I have thus been groping for, and am at length arrived at, is — this argument. The time of the noble and learned person, whose seat is sometimes upon a *bench*, sometimes upon a *woolsack*, is insufficient for the discharge of the duties of *perfect* obligation by which he is pressed: — *à fortiori*, for *imperfect* ones. Clearing the paper of the causes is, so far as time and powers serve, matter of perfect obligation; drawing this bill, or any other bill, is matter either of no obligation at all, or, at the utmost, but of an imperfect one. In the noble and learned bosom here in question, *conscience* is at once too delicate and too enlightened, to sacrifice *perfect* obligations to *imperfect* ones. Therefore, it was *not* by the hand of the noble and learned lord that this bill was drawn. Therefore, again, it *was* drawn by some other, and consequently by some inferior hand: which hand, saving its inferiority, is unknown, which is all that I *do* know, or, so long as it is in my power not to know, *will* know, concerning it.

Hence, my Lord, my comfort: and now, with a tranquillized mind, I enter upon my new task.

Your Lordship will be apt to smile — other readers, if I happen to have any, will stand aghast — at seeing a *letter* divided into *chapters*, and those chapters perhaps into *sections*. But having no share in that profit which has *unintelligibility* for its source, nor interest consequently in manufacturing a chaos, without "distinguishable feature, shape, or limb," such as the laws of *this one* country (this proposed law among the rest) are doomed to be, — more particularly in their *first concoction*, when (for the purpose of reference, confrontation of parts, methodization and discussion,) *division* and *distinction* are most necessary — having no such profit, I say, nor consequently any such sinister interest, even the *law of custom* — to so many noble and learned persons, and on such *good* and *valuable* considerations, the dearest and most sacred of all laws — has not been able to prevail upon me to forego the use of those instruments of distinct conception, as well as unambiguous and uncircumlocutory reference, which have the rules of *division* and *numeration* for their source.

CHAPTER I. ANALYSIS OF THE BILL CALLED LORD ELDON'S BILL.

§ 1. *Distinguishable Parts.*

For the purpose of such observations as I may have to submit, I shall take the liberty of considering the matter of the bill as divided into four parts: —

Part the *first*, taking for its *subject* the judicial establishment of the Court of Session, and the course of procedure in that court, and for its declared *object*, "dispatch of business," occupies itself in making regulations

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outright, by the sole wisdom, as well as by the authority of parliament.

Of the nineteen sections that may be found on numbering the paragraphs in the bill (for, as already intimated, it would have been *unparliamentary* to have put them into a state already fitted for numerical reference, *i. e.* into a state in which they would have been capable of being referred to, otherwise than by a constantly tedious and oftentimes ambiguous circumlocutory designation,) this part embraces, or at least touches upon sections ten, viz. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13.

Part the *second*, taking in hand the same *subjects*, and (it may be presumed) looking to the same *object*, not to speak of other objects, occupies itself in giving to the Court of Session powers of *subordinate* legislation, to be exercised on the *subjects* mentioned above. — Sections touched upon four, viz. 5, 6, 9, and 11.

Part the *third* occupies itself in giving to a set of special commissioners *authority* (but without *power*) to make *inquiries* relative to the course of procedure in that court and the *sheriff's* court, as carried on at present, and thereupon to propose any such alterations as, in their judgment, may seem proper to be made by parliament; as also to *another* special commission, the operations of which are confined to the particular purpose of reporting concerning the utility and proper extent of *jury trial*, and the most advantageous mode of engrafting it upon whatsoever system of procedure may have been proposed by the set of commissioners *first* mentioned.—Sections, two, viz. 18 and 19.

Part the *fourth* takes for its *subject* the appeal presented from the Court of Session to the House of Lords; and for its *object* (to judge by inference, in default of express declaration,) — for its principal, at least, if not sole *object* — the reducing the "burthen" imposed by those applications "on the time of the House of Lords." Such is, at any rate, the principal declared object of the plan contained in the *memorial* presented to the House of Lords by eleven out of the fifteen judges of the Court of Session, headed by the Lord President: which memorial was followed by a bill, and that by a second, having for its reputed author the same right honourable judge: which bills, taken together, form, upon the face of them, the basis of *this*, which since that time we have seen issuing from a still higher source. — Sections, four, viz. 16, 14, 15, and 13.

I proceed to sketch out the contents, or at any rate the *topics* of the bill, considered as divided into these four parts:* —

* The Bill (with alterations alluded to *infra*, p. 51, note ‡,) was passed on the 4th July 1808, (48 Geo. III. c. 151.) The Court of Session was remodelled by 6 Geo. IV. c. 120 (5th July 1825,) which appointed permanent Lords Ordinary of the Outer-House. By 1 Will. IV. c. 69, § 20, the number of Judges was reduced from 15 to 13; four Judges, including the President, sitting in the First Division of the Inner-House, the same number, including the Lord Justice-Clerk, in the Second, and five Lords Ordinary sitting in the Outer-House.—*Ed.*

† In the Act (§ 7,) four Judges in each Division were to be a quorum.

‡ By the original Bill, in case of an equality of voices in either Division, the President of the other Division was to vote. By an amendment suggested by Lord Eldon, in case of such equality, the matter was to be again discussed, and in case of equality a second time, judgment given for the defendant. By the act as passed (§ 9,) on an equality after a second consideration of the case as above, a Lord Ordinary of the Division was to be called in from the Outer-House to vote.—*Ed.*

§ 2. Part I. PARLIAMENTARY *Regulations touching the Judicial Establishment.*

1. — Section 1. The Court of Session to be cast into *two* Divisions: in Division the First, the *Lord President* and *seven* other judges; in Division the Second, the *Lord Justice-Clerk* and *six* other judges.

2. — Section 2. The king to "*appoint*" which of the judges shall sit in the several Divisions. (The appointment *first* made, quere, is it to be susceptible of *variation?*)

3. — Section 2. The Lord President of the whole court to preside in Division the First; the Lord Justice-Clerk in Division the Second: in the absence of such permanent president, an occasional *president* to be elected on each occasion by "the judges then present;" (quere if by "to *sit at the head* of such Divisions respectively," be meant, *to exercise the functions of president?*) [*N. B.* In no one of the three four-seated courts in Westminster Hall, does the judge who *presides* sit *at the head* of the *line* of judges.]

4. — Section 3. Each Division to contain the same number of "Judges of the Court of Justiciary," reckoning for one the Lord Justice-Clerk — (who always is one.)

5. — Section 7, undertaking to give a *quorum* number to each Division (the same to each,) leaves a blank for it.† (In the case of the entire court, as often as a *quorum* number is mentioned, the blank is filled up.)

6. — Section 8. Except in cases herein excepted (see Part II.) each Division is to have "the like duties, powers, and functions . . . authorities and privileges" as are now exercised or enjoyed by the whole court.

7. — Section 8. This section takes for its object, the securing a *decision* in the case of *difference of opinion* among the judges, with equal numbers on each side. But of this part of the bill, I find myself unable to give any tolerably correct account, in any other words than its own.‡

8. — Section 9. Liberty to the plaintiff to

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choose under which Division he will commence his suit.

9.—Section 9. Cases of *remitter* excepted (see Part II.) no removal of a suit from Division to Division. (Words in abundance, clouds proportionable.)

10.—Section 10. Powers for enabling each Division to obtain assistance from the opinions of the other.

11.—Section 11. "*Forms of proceeding and process*," to be the same in the two Divisions: no alteration but by the whole court.

12.—Section 12. Causes depending at the commencement of this act, how to be distributed between the two Divisions.

13.—Section 17. On the appointment of a new judge, "the forms of admissions are to be gone through" in that division only to which he "is appointed." "If the admission be objected to, the objections are to be judged of by the whole court."

§ 3. Part II. *Powers to Session for subordinate Legislation.**

14.—Section 5. Powers to the whole court, for determining in what *numbers* in each Division the jud es shall officiate in the Outer-House and Bill-Chamber, separately or together.

15.—Section 5. So, "in what *manner*;" whether in the present, or in any different one.

16.—Section 5. So, whether "constantly or usually" some shall sit in the *Outer-House* or *Bill-Chamber*; others in the *Inner-House*.

17.—Section 5. So, in what "*rotation*;" for example, "of *years*, *sessions*, months or weeks;" regard being had to "*dispatch of business* and *avoiding of expense*."

18.—Section 4. So, to regulate the *days* of sitting in the two *Divisions during the time of session*: (in which phrase seems to be implied, that in *vacation* times, being four months and two months, total six months, in the year, neither of the Divisions are to sit; viz. in the Inner-House: with the exception, probably, of Ordinaries, in the Outer-House and Bill-Chamber, as at present.)

19.—Section 9. So, to regulate concerning the *remittal* of causes from Division to Division, in consideration of a "*connexion*" between cause and cause.

20.—Section 11. So, to regulate concerning the "*forms of proceeding and process*" in each Division: "and particularly concerning the mode of conducting the *pleadings* by writing or *viva voce*," and that as well in the Inner-House, as before the Ordinaries.

§ 4. Contents of Part III. *Authority, inquisitorial and initiative.*

1.—Section 18. Power to the king, either by *letters patent*, or by instrument under his *sign-manual*, to appoint commissioners (*number* not limited) to sit at such times and places as they think fit, for the exercise of the functions hereinafter mentioned; with power to choose a *præses* (*i. e.* one of their number (it is supposed) for *præses*) as also "a clerk" (*one* clerk).

2.—Section 18. Authority (without any coercive power) to these commissioners, "to make *full* inquiries" (without power for compelling *answers* to any such inquiries) "into the present forms of the court in conducting *process*, *extracting decrees*, *registration* of the same, and *execution* thereon, or upon *letters of diligence*" (*Anglicé* process) "passing the signet, or any other matters touching the *process* or *proceeding* of the said court."—(*Process Scoticé* is synonymous to *proceeding Anglicé*.)

3.—Section 18. Authority "to set down in writing,—"*amendments*," such as "shall appear to them—most reasonable and best calculated for the *due administration of justice* in *that* court."

N. B. So far as concerns the Court of Session, every point in which the *personal* interest of the judges is more particularly concerned, and in particular that "*repose*" to which their determination to sacrifice the interests of justice has been solemnly declared (Memorial, Art. 50,) seems left to the uncontrouled operation of that *sinister* interest:—the commissioners not authorised so much as to *propose* anything in relation to it.

Forms of Pleading—(a subject sufficient of itself to absorb the whole of a man's time for months or years)—another point which the commissioners are not to meddle with: reserved for the judges, whose determination not to give up a particle of their time has been declared as above.†

4.—Section 18. Authority "to inquire into the fees, perquisites, and emoluments, claimed by or belonging to the clerks and officers of the court, and other members of the *College*

* Since the text was written (indeed, since it was printed) came into my hands another bill that has issued from the same high source. Of the several alterations contained in it, there is not, I believe, one of any importance, the demand for which had not presented itself to my observation, and been made the subject of remark, either in print or manuscript. So far as this coincidence has taken place, what was matter of censure when applied to the first bill, will operate, of course, as matter of justification, when applied to the second.

The regulations which, by the powers given, as above, would, under the first bill, have been made *definitive*, are, under the amended bill, declared to be but *provisional*, subject to alteration by parliament, either of its own motion, or at the suggestion of the commissioners hereinabove and hereinafter mentioned. In point of effect, the difference will be found to be prodigious and proportionably beneficial; but the original design ought not to be forgotten.

† See note * in preceding column.

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of Justice," (including those called in England *attorneys* and *solicitors?*) " or" (and) " persons *connected* with the said court, the faculty of *advocates* excepted."

5.—Section 11. Authority to report " how far the same," (viz. the fees, &c.) " are now reasonable or" *(and)* " ought to be *allowed* or *increased.*" (Under the words " *how far,*" would *diminution* be understood to be comprised, as well as *increase* and total *disallowance?*)

6.—Section 18. In case of the abolition of any "*emoluments*" by " regulations *introduced* by this act," or " by the adoption of any regulations" *proposed* as above, (nothing said of abolition by regulation, if any, made by the *Court of Session*) authority to report what *satisfaction* it may be reasonable to make to the persons deprived of such emoluments. (Of satisfaction for loss accruing to persons entitled to *nominate* to the offices, the emoluments of which may then come to be abolished, nothing is said.)

7.—Section 18. Authority to propose regulations " relative to processes, or causes to be brought into the Court of Session by *advocation*" *(Anglicé* by *certiorari)* " or *suspension*" (Anglicé by *writ of error or appeal)* " *or in the first instance*, or before the Circuit Court;" *i. e.* (as explained in the preambulatory part of this section) " the Circuit Court of *Justiciary* by appeal." (Procedure in causes brought into the Court of Session *in the first instance*, having (as per No. 3) been already included in the authority given to these commissioners, what is it that can have been intended by the words, *first instance*, in this clause, which appears not to have any other object than the option to be made as between one mode of appeal and another?)

8.—Section 18. Authority "to inquire into the *fees, perquisites*, or *emoluments*, claimed by the clerks and other officers" (judges, it seems, excepted) in the *sheriff's courts* in Scotland;" " and to take and set down in writing what occurs to them relative thereto."

[1. Of the great variety of inferior judicatories or *sheriff-deputes' courts* (not to mention their *substitutes'* courts, which in fact are distinct judicatories with appeal to the respective principals,) *justice of peace* courts, *borough bailies'* courts, *dean of guilds'* courts, *barons'* courts, *commissaries'* courts, of different ranks one above another, *admiralty* courts ditto, all liable to have their proceedings reviewed by the Court of Session, how happens it that the inquiry is confined to the " *sheriff-courts,*" meaning the sheriff-depute's court?†]

2. Under this term, " *sheriff-courts,*" (not very usual in Scotch law) would the judicatories filled by the *substitutes* be understood to be included, as well as those filled by the principals?

3. In the instance of the judicatories, included, as above, in the authority for making inquiry, why confine the inquiry to the subject of the " *emoluments,*" excluding the *system of procedure*, between which and the system of procedure pursued in the *Court of Session*—(the judicatory by which the proceedings in those subordinate courts are reviewed)—the connexion is necessarily so intimate?

4. " *Taking and setting down in writing what occurs—relating thereto.*" By this expression was it meant to *denote*, or to *include*, authority for proposing "alterations or amendments," as in the case of the Court of Session? If so, what can have been the reason for thus varying the phrase?‡

9.—Section 18. Like authority respecting " the state of the *records* in these courts:" viz. the " sheriff courts," and those only, as aforesaid. (Like queries to this clause, as to the one last mentioned.)

* In the amended Bill are added, "*Admiralty, Commissary*, and *other* courts."

† In Scotland, the term "sheriff-court" is generally considered applicable to that of the sheriff-substitute. The sheriff (or as he was called at the time when these letters were published, the sheriff-depute) generally resides at a distance from the county, and merely decides in appeal a very small proportion of the cases which have passed through the hands of the substitute.—*Ed.*

‡ In the amended Bill is included in the authorities that of " making inquiry into the proceedings in the Admiralty and Commissary courts, and in the inferior courts in Scotland, relative to matters of a civil nature, and to report in what manner *these* may be improved." (*These* indicates a Scotch hand.) The sheriff-courts—how came they on this occasion to be omitted? On the occasion of *fees*, &c. they were specified, as per note in preceding column. Are sheriff-courts understood to be included under the denomination of " *inferior*" courts?

In the amended Bill, in the enacting part relative to the fees, &c. between the word " *sheriff*" and the word " *courts,*" is inserted the word " *other,*" which of course takes in all courts, the *small-debt courts* not excepted. To clear away these uncertainties, would not a schedule of the courts be of use?

Other authorities added in the amended Bill are—

1. (To these sign-manual commissioners,) to report in what manner and form—jury-trial could be most usefully established " in *that* court," (not in any other.)

2. In what manner the present form of process in *that* " court," (the Court of Session, as above) " might be improved by conducting more of the pleadings *vivâ voce.*"

3. " By limiting the power vested in single judges of frequently reviewing their own interlocutory judgments:"—(This for extirpating the abomination of *representations.*)

4. " By obviating inconveniences arising from the mode now practised in taking proofs by *commission.*"

5. " By regulations relative to proceedings in the Bill Chamber."

[These authorities are to be found in the Act, § 22.—*Ed.*]

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10.—Section 18. Injunction to these commissioners, to report "the whole of their proceedings to his Majesty, with all convenient speed:" the report "to be laid before *both Houses* of Parliament, by *one* of his Majesty's principal Secretaries of State."

11.—Section 19. Power to "his Majesty, in and by letters-patent under the *great seal* of the United Kingdom" (*i. e.* to the noble and learned mover of the bill,) "to nominate any number of persons not exceeding" (with a blank for the *number*,) "and such persons being either" (with another blank for the *qualifications.**)

12.—Section 19. Authority "to make inquiry, *by all such lawful ways and means as shall seem to them expedient* in that behalf, *how far* it might be of *evident* utility to introduce into the proceedings of the Court of Session, or any other court in Scotland, *trial by jury*" (no authority having been given, either to *this* or the *other* set of commissioners, for making any inquiry into the system of procedure pursued in any such other court,) "in any and what cases, in matters of a civil nature, and in what manner and form the same could be most usefully established."

13.—Section 19. Injunction to *report*, as in the case of the *sign-manual* commissioners.

[On the occasion of the *shadow of power*, given, as above, to the two sets of commissioners, for the collection of the requisite stock of information, quere, what can have been the reason of the extraordinary difference observable in the delineation of the shadow, in the two cases? And quere, what could have been intended, or supposed to have been done, by the line of words here printed in italics?]

§ 5. Part IV. *Regulations touching* APPEALS; *viz. from Session to Lords.*

1.—Section 16. Power to the House of Lords," in its *sound* discretion,"—to decree payment of interest, simple or compound, by any of the parties appellant. (The House, has it then *two* sorts of *discretion*, a *sound* and an *unsound* sort—the sound not to be brought into action but on great occasions?—or is it that, there being but *one* sort, the soundness of it is intended to be secured by its being thus *enacted* to be *sound!*)

2.—Section 14. "When any appeal is lodged in the House of Lords"..... power to "the presiding judge, with the judges of the Division to which the cause belongs," or any three of them, to regulate all matters relative to *interim possession*, or execution, and payment of costs and expenses already incurred, according to their *sound* discretion, having a just regard to the interests of the parties, as they may be affected by the affirmance or reversal of the decree appealed from."

3.—Section 14. "When any appeal is lodged in the House of Lords, a copy of the petition of appeal *shall* be laid by the appellant or appellants, or by the respondent or respondents, before the presiding judge," &c. as above.—(The word *shall*, is it to be considered as *imperative*, or as *simply permissive?* If *imperative*, on whom? Or was it not meant that it should be, in the first instance, *imperative* upon *somebody*, and then eventually *permissive* to *somebody else?* And if so, at what *time* was it understood that the permission should commence?) &c. &c. &c.

4.—Section 15. Of *interim* regulations, so made as above, the *execution* is not to be *stopped* by *appeal.*

5.—Section 15. "Respecting all matters .... done," or "having taken place .... in consequence of such regulations so made as to interim-possession, execution, and payment of expenses or *costs*," power to the House of Lords, on the appeal from the decree, "to make such order ..... as the justice of the case shall appear to the said House of Lords to require."

6.—Section 13. "From *interlocutory* judgments .... no appeal, ... except with the leave of the Division of the judges pronouncing such interlocutory judgments."

7.—Section 13. "When a final judgment or decree is appealed from," power "to either party to appeal .... from all or any of the interlocutors .... pronounced in the cause, so that the whole, as far as necessary, may be brought under the review of the House of Lords."

8.—Section 13. No appeal to "be allowed from interlocutors or decrees of Lords Ordinary, which have not been reviewed by the judges sitting in the Division to which such Lords Ordinary belong."

§ 6. PHRASEOLOGY, *a Topic dismissed.*

On the subject of *Part the first*, as above marked out, I shall not, on the present occasion at least, attempt giving your Lordship any further trouble.

So far as concerns this *first* part of the bill, such remarks as I should have to submit, would turn chiefly upon the *penmanship*. Doubts, for example, concerning the meaning of the learned scribe; and, supposing the meaning rightly guessed at, doubts whether the words would answer the purpose of giving effect to it.

In legislation, though there cannot be anything but what has its importance, yet, as between *style* and *matter*, so far as they are capable of being separated, *matter* will, in the order of importance, claim an undisputed pre-

* These great seal commissioners are removed out of the amended Bill. They were knocked on the head by the resolutions voted by the whole Faculty of Advocates.

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ference. Thence it is that, for the present at least, *Part the first* is put aside.

The apprehension I have been all along under of falling into the sin of *misrepresentation*, and my anxiety under that apprehension, must already have betrayed itself. Of misrepresentation, there are two modes: one is, when, the language of the *original* being *clear*, the *representation* given of it is *unfaithful*, *ambiguous*, or *obscure*: the other is, when, the language of the *original* being *obscure* or *ambiguous*, the *representation* given of it is *clear* and *decisive*.

In *practice*, this *last* mode of misrepresentation is the most *mischievous*. Be the *original* what it may, if the *abridgment* appear unintelligible or doubtful, a man betakes himself to the original, of course: but if, the *original* being *ambiguous*, the *abridgment* be *clear*, the clearer it is, the more perfectly he is satisfied with it, and the less he suspects the danger he is exposing himself to, by trusting to the abridgment, and upon the faith of it, ascribing to the original a sense, which, when the time comes, may prove, to his dismay, to be different from the sense put upon it by the judge.

How happens it — (over and over again have I asked myself this question, without ever having been able to find an answer) — how happens it, that throughout the texture of this bill, the language is continually varying — varying, as between clause and clause — between clauses, in which, so far as can be concluded against the presumption afforded by the variation in the language, the import meant to be conveyed was exactly the same? To what cause shall this perpetual departure—departure of a man from himself—be ascribed?—to *thought*, or to *want of thought*? Is it that *certainty* was sacrificed, perpetually and deliberately sacrificed, to an imagined *beauty*—beauty supposed to be produced in an act of parliament by variety of style? Or is it that this bill, a bill on which the state and fate of justice in one of the three kingdoms depends — this truly momentous bill, having, in the manner of a *speech spoken*, been dictated to an *amanuensis*, was never looked at afterwards?

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SUMMARY VIEW

OF

THE PLAN OF A JUDICATORY,

UNDER THE NAME OF THE

COURT OF LORDS' DELEGATES,

Proposed for the Exercise of those Judicial Functions, the adequate Discharge of which by the whole House has, for these six or seven Years, been rendered confessedly impracticable, by want of Time.

SECTION I.

NUMBER AND CHOICE.

THE Judges, Members of the House (so far as obtainable: — viz. so far as in that high station it shall happen to a set of fit persons, finding adequate inducements for the acceptance of so laborious a duty) to obtain the preference: — [See § 2, article 2] — and with salaries; —— in consideration of their taking upon them the requisite official obligations.

2. Puisnes, three: — to be elected, one for each of the three kingdoms, by the Lords sitting for that kingdom, and to be denominated respectively the *English*, the *Scotch*, and the *Irish delegate*: —— in the hope that in each the choice may fall upon some person who, being in a special degree conversant with its peculiar laws and local circumstances, may be considered as in a more particular manner charged with its legal concerns. In the two minor kingdoms, all danger from local partialities will be excluded by the number of the votes (three to one) not exposed to any such sinister influence.

3. The President to be elected by the whole house, and to be denominated the *Union delegate*: —— that the English ascendency, on its present footing, may be preserved; and thereby this committee rendered the more correct a representative of the whole house. The presumption is, that the president, and perhaps the three puisnes, or some of them, — at least, by reason of the peculiarity of Scotch law, the one for *Scotland*, — will, at the outset, be a professionally-bred lawyer, taken from the bar, or from the bench. But the need of such assistance will be less and less thenceforward — [See § 2, article 2, 3:] — and all this will, of course, depend, at all times, upon the pleasure of the House.

4. Election annual: — viz. at the commencement of each session. —— If, as in the case of the *king's delegates*, viz. in *ecclesiastical* and *admiralty* causes, there were a fresh election for each cause, the office would not be *worth acceptance*: or, if it were, a perpetual *ferment* would thus be kept up: at any rate, the benefit of *appropriate experience* would be apt to be lost. If the office were for life, as in three of the four Westminster-Hall courts, the mind of the delegated body would not be (as, in this case, not to change the constitution, it ought to be) the nearest resemblance capable of being taken of the mind of the delegating body: the supreme judicature would be no longer substantially in the House of Lords. The renewal of the election every year, will provide, *in case of necessity*, the gentlest and most decorous mode of ridding the judicatory of any member whose performance may have fallen short of expectation: while the apprehension of it will be a security for propriety of conduct, and a preservation against negligence. Nor yet would this *possibility* of amotion destroy the value of the office: it would be considered as differing *substantially* but little from an office for life: as in the case of the *chairmanship* of the *Middlesex* sessions, and in that of the *chamberlainship* of the city of London. The former case may be referred to, as one

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in which the utility of periodical election, as above, has in every point of view received a satisfactory exemplification.

5. Mode of election *secret*, viz. by ballot: —— that the electors, being free as possible, as against all influence of *will* over *will* (no influence prevailing but the unpreventible and oftentimes salutary influence of *understanding* over *understanding*,) the mind of the delegated body may, as above, be the faithful copy of the mind of the constituent body, taken in its *permanent* and *habitual* state: — and that no elector may stand exposed, or conceive himself exposed, to the danger of finding himself, by an adverse vote, rendered an object of personal displeasure to a person to whom it may happen to become his judge.

6. Notwithstanding the appropriation of the *title* of *president* to a single person, the *functions* to be exercised by all the judges in turns: each taking his month, or his number of causes, or the causes of his own kingdom: or the above different modes of alternation being combined: —— that *inept* candidates may keep aloof; — that the sense of *responsibility* may be kept alive in all; — that the faculties of all may be sharpened and *invigorated by exercise;* — that no one of all four offices may ever degenerate into, much less be at the time of the appointment designed to be made, a *sinecure;* — and that each *puisne judge* may be the better qualified for eventually succeeding to the office of *president*, thereby adding to all other elements of aptitude that of *appropriate experience*.

By the obligation of *presiding*, *i. e.* taking the lead in causes, and being the mouth-piece of the court — viz. not only in the delivery of the decision, but, in the conduct of the whole business, doing all that which, in judicial business, is done by the *chancellor* in the House of Lords, — an effectual exclusion will be put upon all persons manifestly unfit for the conduct of judicial business in general: — by the more particular obligation of presiding in causes coming from the *kingdom* for which each delegate is respectively elected, an exclusion will naturally be put upon a person not particularly competent to the conduct of the business from that kingdom; a person conversant solely in *Scotch* law will not find it so easy to be chosen to fill an English or Irish delegateship; a person solely conversant in *English* or *Irish* law will not find it so easy to be chosen to fill the Scottish delegateship.

SECTION II.

MEMBERS, LORDS VISITANTS.

1. Every Member of the House to bring with him into the court of Lords Delegates every other right; but not that of voting. —— Not that right; — because to that are attached whatever imperfections the Lords' judicatory has been charged with by *Lord Hale:* viz. fluctuation of numbers; whence *general deficiency* of numbers (especially of *minds* actually applied to the business) alternating with *occasional excess;* — occasional *partialities* or suspicions of partiality, by reason of latent interests; — occasional deficiency in point of *intellectual aptitude*, or *appropriate learning*, in the instance of the presiding member, or of a more or less considerable proportion of the other voters; — want of a sufficiently strong sense of *responsibility*, that guard to *probity*, that security for adequate *intelligence:* a deficiency which so naturally results from the power of contributing, by a bare expression of *will*, to the formation of a decree, without the obligation of giving *reasons*.

So long as it is without the right of voting, although a Lord were to carry with him to the judicatory all the partialities of a party, he would only add one unpaid, to the two professional, advocates. For ages together, according to Lord Hale, a multitude of assessors, with right of "*advice*" only, formed a part of the judicatory of the Lords' House.

2. In the court of Lords' Delegates, Scotch peers, *though not having seats in the House*, to be admitted to the privileges of Lords Visitants: in like manner Irish Peers and Bishops. —— The design and expectation is, that, with the aid of so numerous a reinforcement, there might be found, for subsequent vacancies, a sufficient number of persons already invested with the peerage, *willing* to charge themselves with the duties, as well as *able* duly to discharge the functions, of the office. *Judicature*, it is conceived, and especially in the particular tribunal here in question, would be a still more appropriate preparative than *advocateship*, for judicature. In the character of Lords Visitants, with every right but that of voting, the members at large of the House of Lords, together with the Scotch and Irish *non-sitting* Lords, would be what, according to Lord Hale, the *Consilium Magnum* was formerly in the House of Lords — judges, as to every right but that of voting. The bench of the court being open to them as Lords Visitants, a sufficient number for each kingdom might find adequate *inducements* for frequent attendance, in the mixed and decorously ambiguous characters of *inspectors* and *censors*, *students*, and future *candidates:* — nay, even, on occasion, if such be their pleasure, latent *advocates* for particular interests: — forasmuch as they will not have it in their power to gain support to those interests otherwise than by *reason*, from which no prejudice can ensue to *justice*. Among the Scotch and Irish *non-sitting* lords, such as may have it in contemplation to become candidates for seats in

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the *House* on future vacancies, will possess on this *bench* a theatre, on which their qualifications will find much better opportunities of displaying themselves, than any that are at present open to them, or that could be opened to them by any other means. For the *chancellorship* (not to insist on the chief-justiceships) this bench, either on the *judges'* side, or on the *Lords Visitants'* side, might, after *due probation time*, afford at least as suitable a nursery as the bar of a common-law court. The instances of *Sir Christopher Hatton*, *Lord Shaftesbury*, and even *Lord Clarendon*, together with *Cromwell's English judges in Scotland*, may be worth adverting to in this view. Against inaptitude for want of appropriate learning, a free and periodically-repeated election, an election by that House, in which, at the same time, the crown can never fail of possessing its due influence, will surely be at least as good a security as can be afforded by the single probity and discernment of any minister.

3. Power to each judge of the court to appoint for his occasional *substitute* a Lord Visitant; (such substitute, however, not to *preside* [as per § 1, article 6] without the consent of all the rest:) —— that, in case of indisposition, the number of judges may never be incomplete; —and that from this faculty, Lords, looking forward to the judgeship, may derive an additional opportunity of manifesting, as well as acquiring, superior aptitude. The care of his own reputation will (it is conceived) prevent the judge from choosing for a substitute any Lord other than one whose fitness for the station might, upon a vacancy, be sufficient to point him out to notice.

In the judicial establishment of *Scotland*, this power of *substitution* is exemplified to a very considerable extent: and though under so much less efficient security against abuse than here, with (it is supposed) sufficiently established and generally recognised advantage.

SECTION III.

DECISION OF THE COURT — ITS EFFECT.

1. In respect of *irreversibility* and *immutability*, except in the possible, but highly improbable, case of misbehaviour on the part of a majority of the four judges, of such sort as to call forth *censure*, the judgment of the Court of Lords' Delegates to stand on the same footing with that of the House: —— otherwise it would be no better than an interpolated and additional stage of judicature, affording to the time of the *House* but an inadequate relief, and to *suitors* a grievous additional burthen, instead of relief.

2. The Court divided, and the numbers equal, power to the court to call in a Lord Visitant for the occasion: if no one can be thus agreed on, each judge to propose one, and the House to choose (viz. as before by ballot,) but without being restricted as to the person so proposed.

SECTION IV.

PLACE OF SITTING — HABILIMENTS — TITLE.

1. Place of sitting, as near to the House as may be: —at any rate, under the same roof: —— that, in the public mind, the idea of the body delegated may be as closely as possible connected, not to say identified, with that of the body delegating: and that, in parliament time, whatsoever occasion brings members to the House, may have its chance of bringing Lords Visitants to the Judicatory.

2. Habiliments, such as may serve to combine in the public mind the idea of the judicial function with that of the superior political station and dignity: —— Baron's robes, for example: —higher ones, of course, if the judge possesses a higher rank in the peerage. The judges of the court of Exchequer having originally been Barons (probably of parliament,) bear, though not the robes, the title of *Barons*.

3. In an ante-room leading to the bench, a Lord Visitant to invest himself with some easily assumed and redeposited ensign of office (such as a short mantle,) to attest to the public eye his right to the privileges which he may be about to exercise: —— The distinction being thus sufficiently expressed without the aid of *place*, seats left unoccupied by Lords Visitants may, by sufferance, as at one time in the King's Bench, be occupied by private individuals.

4. Each judge, if not a peer, to bear before his name the title of *Lord*, during his delegateship.

SECTION V.

DURATION OF THE ESTABLISHMENT.

1. Duration of the establishment, temporary, of course: —— as in the case of the *Grenville act*, and the *Middlesex police act*. In the first place, a length of time sufficient, upon calculation, by means of uninterrupted sittings, for the discharge of the *existing arrear*: — to that another fixed length added, sufficient for a further trial of the institution, as applied to the *current influx*.

2. At the end of the last fixed length of time, the salaries to cease, unless the establishment be continued on by parliament: but with power to the House to continue the authority beyond the day: —— lest causes that have been begun before this judicature, should remain undecided by it. The salaries,

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unless a day were fixed for their cessation, would, in their tendency, operate as bounties upon delay

SECTION VI.

OBLIGATIONS.

1. Oath of office, if any, not so general as to be nugatory. —— The *use* of official oaths is, in case of misconduct, to expose to loss of reputation him, who, by deficiency of legal evidence, or by difficulties standing in the way of prosecution, is exempt from legal censure: to which purpose, the collection made of the modifications of misconduct should be as ample, and the description given of them as particular and pointed, as possible. The *bad effect* is, by sham security to engage unwarranted confidence: in demonstration, a bridle; in effect, a cloak.

2. A Lord Delegate, if a member of the House, not to speak or vote in the House, or give proxies, during his delegateship: —— lest, of the time purchased for judicature, any part be diverted to politics; — lest the politician corrupt, or be suspected of corrupting, the judge; — and lest the fear of their leaving their seats in the *court* vacant, while engaged in the *house*, should exclude members from being the objects of choice.

GENERAL OBSERVATIONS.

The option is (be it observed) not between this plan and *doing nothing* (for either the House will *abdicate* its appellate judicature, having first converted it into a *manufactory of vendible delay*, or something will be done,)* but between this plan and some other. Of this plan, the *first* object was, that as *little change* should be made as possible: the *next*, that whatsoever change were made, should be for the *better*. The admission of the non-sitting Scotch and Irish Lords to the privileges of Lords Visitants, episodical as it may appear in *form*, is in *substance* not a *change*, but a *preservative* against change. The main object was to give the best chance possible for continuing the function in the aristocratical hands in which it has all along (and, though not altogether without inconvenience, yet without any inconvenience on the score of aristocracy) been lodged: continuing it, viz. so far as could be done without establishing that indefeasible monopoly, which, in the eyes of the public, might be apt to appear preclusive of *scientific aptitude*. The advantages given by the plan to these *unchosen* peers, are therefore given to them, not as against their more fortunate fellows in the peerage, but as against commoners. Necessity,—and that, at the outset more especially, a very hard and galling necessity, — excluded them, on the occasion of the respective *unions*, from by far the most valuable portion of their hereditary privileges: to the proposed share in the supreme judicial function, this necessity has, under the proposed plan, no application: admitting them to it was therefore rather *continuing* what might be continued to them of their ancient privileges, than investing them with new ones.

* By the accounts printed by order of the House of Lords—date of the order 11th of March 1807—it appears, that in the space of thirteen years, and part of a fourteenth, ending on that day, of 501 appeals that had been *presented*, only 356 had been *disposed of*, viz. by being *heard*, *withdrawn*, or for want of prosecution *dismissed*: of which only 195 had been *heard*: — that consequently the *arrear* that, having in that time accumulated, remained undisposed of, amounted already to 145: — that the number of days employed in the hearing of those 195 that had been heard, had, in the whole number of fourteen years, amounted to 541: making upon an average per year, *appeals heard*, about fourteen: so that, to hear, at the same rate of dispatch, the accumulated arrear alone, exclusive of the growing influx, would require ten years, and half of another: and that, though, by the number which, when the time came for hearing, would be either *withdrawn*, or for want of prosecution *dismissed*, a corresponding deduction would be made from the amount of those so requiring to be *heard*, yet that that deduction would be nearly balanced by the increased length of the time employed during the last seven or eight years in the hearing of each cause: — and that, even if it had nothing to balance it, it would not reduce to less than *seven* the number of years requisite: — and that, after all, the real arrear must have been considerably greater than this amount: — for in these accounts are not included such of the English appeals which are called *writs of error*, the number of which, in the three years ending in 1797, was (as per 27th report of House of Commons Finance Committee, anno 1798, p. 272) half as great again as that of all the appeals called *appeals*, put together. In these three years, the number of writs of error presented was 125: that of appeals, Scotch and English together, 82; — that, in respect of the *ends of justice*, *one* consequence of this retardation was, that such causes as about that time had been *heard*, must already have been waiting for a hearing, and the party in the right labouring under a denial of justice, *about three or four years*: — *another*, that at the price of *costs*, composed, as to the greater part, of *fees to the officers of the house*, in all such cases in which the effect given to appeal is that of *stopping execution*, viz. in the case of the Scotch appeal, and in that of the English appeal called a *writ of error*, every *mala fide* defendant, against whom, as being in possession of property belonging to another, judgment had been pronounced in a court below, then had, and still has it in his power, to derive, during that length of time, under the protection of the house, *a profit from his own wrong* to the amount of common interest (5 per cent.) or commercial profit (12, 15, or 20 per cent.) according as he happens to be circumstanced: — which length of time is in a course of unlimited increase.

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As to the ulterior and unlimited door left open for the admission of *commoners*, viz. of such persons in whose instance presumptive evidence of pre-eminent aptitude for this supreme judicial station may have been afforded by ability displayed in a subordinate rank of judicature, or in a course of professional practice;—were the right of election in any other hands than those of the Lords themselves, such an admission would indeed be a most serious invasion of their privileges: but, that right being in their hands, and theirs alone, the consequence is, that, by the *enlargement* of the *field of choice*, the *power* of the House, so far from being trenched upon, would be *enlarged*.

To render the mind of the body *deputed*, a faithful representative of the mind of the body *deputing*, it is not necessary that the members of the one should be members of the other. Doing the will of the King, the *king's delegates* are not *kings*:—to do the will of the *Lords*, it is as little *necessary*, howsoever on other accounts *desirable*, that the *lords' delegates* should be *lords*.

Want of physical power adequate to the dispatch of a mass of business within the space of time, within which, to be done effectually, it was necessary it should be done —*want of time*, in a word, was the infirmity (for such it is) by which *kings* were gradually compelled to commit the judicial part of their authority to other hands. Unless *lords* in England are exempt from those infirmities which are the inevitable lot of human nature, and under which there, as well as elsewhere, *kings* have bowed, it need not be matter of much regret to them to submit, thus late, to a necessity, which, for so many ages past, has been submitted to by kings. The *innovation*, let it be considered, if such it must be called, is not of the number of those which are so apt to be called for by rival ambition, but of those which are forced on by the irresistible hand of the universal and indefatigable innovator, *time*.

Various arrangements, which, in the planning of the proposed judicatory, presented themselves to the proposer, as highly conducive, not to say necessary, to the object of it, are for the present omitted, as not being applicable to this alone, to the exclusion of other judicatories.

By the consideration bestowed for the purpose of the present proposal, on the *judicial function* of the House of Lords, reference being all along made to the several *ends of justice* (of which an *exact list* has been endeavoured to be made out,) the inquiry was suggested, whether, in the exercise habitually given to that function, it has been really co-extensive with what it seems to have been generally regarded as tantamount to, viz. *the function of general superintendence*: meaning thereby, the habit of applying to such of the several *evils* correspondent and *opposite* to the several *ends of justice*, all such remedies as, in the nature of the case, are capable of being applied to them *without the exercise of legislative power*. Compared with this standard, the authority of the House, as at present exercised, was found to be deficient, and to a greater extent than could readily have been imagined.

The physical power of the *House*, as dependent on the quantity of applicable time, having already sunk under the load of business imposed on it by that part of the function of general superintendence, which has been habitually exercised by it till of late years, is of course still more decidedly unequal to any *ulterior* burthen.

But of this demand, *a part* of which has thus been found to overdraw the quantity of time capable of being appropriated to the discharge of it by the *House itself*, the *whole* might find an adequate supply in the more ample quantity capable of being allotted to it by the proposed Court of *Lords' Delegates*: —a tribunal clear of all other business, and sitting on such terms, as would render the *whole* of its official time applicable to the one purpose.

The mass of *remuneration* which on other accounts would, it is supposed, be deemed necessary to be allotted to the members of a tribunal, so armed with power, and so exalted in dignity, would be sufficient to entitle the public to call upon them in return, for a degree of *assiduity*, not inferior to that which is seen to be habitual on the part of other judges. And the greater in extent and value the *service* thus rendered, the more secure would be the requisite disposition on the part of the public at large, as well as of the co-ordinate authorities, to submit, without regret, to the *burthen* that would be to be imposed by the requisite expense.

A view of the particulars, in respect of which the *judicial function*, as exercised by the House of Lords, fails of being coextensive with *the function of general superintendence*, in the extent above indicated as belonging to it, has been already taken. But, under the apprehension of awakening those jealousies which are so easily awakened, or of overloading that patience which is so easily overloaded, this part of the plan is, for the present at least, put aside.

What on this occasion ought never to be out of mind, is, that as to whatever regards the superintending authority of the House of Lords in matters of judicature, the existing practice, whatsoever may be its *effects*, was in its *origin* the mere fortuitous result of a contest for power, between two co-ordinate authorities—the result of anything rather than a calm, and comprehensive, and consti-

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tutionally-concerted plan, directed to the *ends of justice*. This want of *design*, and consequently of *congruity*, is no more than might have been anticipated, by a reflection on the natural course of human affairs: and it may be seen most satisfactorily demonstrated, as well as clearly displayed, in the instructive and interesting preface, prefixed by *Mr. Hargrave* to his edition of the work of *Lord Hale* on the jurisdiction of the House of Lords.

Other expedients have fallen under the notice of the proposer, as having been in contemplation: — an ordinary committee, to begin to sit, or to continue to sit, during the recess: — an *appellate judicatory*, to sit in London, but to confine itself to *Scotch causes*, &c. &c. But, regarding them as having already been found to stand excluded by one or other of two bars, viz. *impracticability* or *inexpediency*, he gladly discards the consideration of them out of a paper, in which the space necessary for any such discussions could not have been found.

He had even set his mind upon an inquiry into the fund of *possible* expedients, capable of being directed to the same end: on which occasion, distribution, governed by *principles* adapted to the nature of the case, or even by *lot* (a mode of selection less objectionable in reality than appearance, and even preferable to the modes of blind exclusion hitherto pursued,) did not pass unnoticed. But, nothing having thus presented itself to his conception, as promising to be suitable to the end in view, in a degree approaching to that of the plan here submitted, he suppresses without reluctance everything that had come into notice under that head.

As to the *present* plan, even to those *exclusively competent* judges, whose approbation it may *not* be fortunate enough to be honoured with, it may, it is humbly hoped, be not altogether without its use. Good or bad, an *anterior* plan, by breaking as it were the ice of the subject, is, to the framer of any *succeeding* plan, commonly found more or less of use, as an object of comparison and reference: and, as to the *observations* submitted in support of it, where, in the character of *reasons*, they fail of producing the effect endeavoured at, in the character of sources of *error* to be guarded against, they may still be not altogether without their use.

If in this, or any *other* way, the *present* plan should contribute to the production of any *other*, which, issuing from some more *competent source*, should, at the same time, be less open to the charge of *unconstitutional innovation*, and more highly conducive to the *ends of justice*, the labour here expended will have received, in the establishment of such better plan, its sufficient reward.

Issuing from *high station*, the stronger the recommendation a plan of any kind derives from the height of the station, the less it is commonly found to stand in need of any other. In one respect, therefore, the present plan possesses an indisputable advantage over any other that is at all likely to come in competition with it. Presented under a name altogether unknown, and without any authority or consideration in the state, if it were to find acceptance, it could do so on no other ground than that of its supposed conduciveness to the object in view.

To *the work at large*, if published, is intended to be added an examination that has been made of the plan proposed by Lord Hale, for an ultimately-appellate judicatory, to be *substituted* to that of the House of Lords: — substituted *wantonly* (one might almost say,) and when no such *necessity* had as yet presented itself, as that which *at present* presses upon the House. In the way of *illustration*, and as serving, by enlarging the view given of the field of argument, to afford the more ample satisfaction to a contemplative and cautious mind, the discussion, it is supposed, may be found not altogether unacceptable. As presenting any the least chance of being preferred *in practice*, either to the plan here submitted, or to any other, the plan of Lord Hale, notwithstanding the high reputation of its author, will scarcely be found worth notice: for, in the character of an *innovation* on the constitution, it was no less *violent*, than, with reference to the *ends of justice*, it may be seen to be unsubservient and *unfavourable*.

JEREMY BENTHAM.

Queen-Square Place, Westminster,
10th January 1806.

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THE

ELEMENTS

OF

THE ART OF PACKING,

AS APPLIED TO

SPECIAL JURIES,

PARTICULARLY

IN CASES OF LIBEL LAW.

BY JEREMY BENTHAM, ESQ.

BENCHER OF LINCOLN'S INN.

FIRST PUBLISHED IN 1821.

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ADVERTISEMENT TO THE FIRST EDITION.

This work was printed many years ago.

Circumstances prevented its being at that time exposed to sale.

In regard to the author, all that need be said is — that it was not by him that it was then kept back; and that it is not by him, or at his instance, that it is now put forth.

If, on either accounts, it were desirable that the causes of its being thus long withheld should be brought to view, those causes would afford a striking illustration of the baneful influence of the principles and practices it is employed in unveiling, and presenting in their true colours.

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ELEMENTS OF PACKING,

AS

APPLIED TO JURIES.

PART I.

CHAPTER I.

OCCASION OF THIS WORK.

§1. *Work on Libel Law commenced — Occasion of it.*

WHAT gave rise to this work is neither more nor less than a *newspaper* article — an article in the *Times* for the 20th of February 1809, and which, so far as it belongs to the *present* purpose, and consists of statements concerning matters of *fact*, is in these words:—

Speaking of a clamour against what is called the *licentiousness* of the press, the article goes on and says — "Such has been the dread inspired by this clamour, ... that of the persons now under prosecution, two have actually *pleaded guilty* to informations for '*wilfully and maliciously slandering the British army*,' who never, till many days after their publication, saw or heard of the libel with which they were charged.....

"The grand fountain of all this mischief," it continues, "seems to be Major Hogan's pamphlet.....; for this very work there are now, or recently have been, we believe, *six and twenty* printers and publishers under prosecution. It was only from one of these that the original pamphlet sprung: the rest did no more than extract from or recommend it, and that upon the attested character of its author, who was no sooner known to have fled from his charge, than every one of them retracted his praise of the work, and was willing to maintain that the Duke of York's character stood as fair as if this individual arraignment of it had not been published; yet is this so far from having produced a disposition to recede from punishing them, that though the informations were all of them filed last term, and might have been tried during the present, the objects of them are, without any assigned cause, to be kept in a harassing state of suspense over the present to the term ensuing.

"And what is the origin of these men's offences? An error common to them with the prosecutor — a belief in the respectability of Major Hogan's character, which was attested by no fewer or less men than Generals Fox, Floyd, Whyte, Dundas, Macdonald, Hall, Hay, Tilson, and Hamilton.

"Can there be a stronger palliation of error, than that the person erring should have been misled by a man of such reputation as the above; more especially when it is considered that the Duke of York was himself as much deceived as any one else by these testimonies in favour of Major Hogan? His Royal Highness, on the strength of them, believed him to be deserving of rank and elevation in the army, and therefore '*noted him for promotion*.' Others, on the very same authority, supposed only that he might be entitled to common credit, and are, therefore, notwithstanding all their renunciations of that opinion, '*noted for prosecution*.'"

Thus far the newspaper. Facts, in their nature so notorious, seemed not likely to have been either invented, or so much as materially misrepresented. I looked out for contradiction or correction, but could hear of none. Whatever I could learn went in confirmation of the statements given as above.

On the subject of *Libel Law*, my general conception had been of some thirty or forty years' standing: for example, that, in point of *actual law*, a *libel* is any paper in which he, who to the *will* adds the *power* of *punishing* for it, sees anything that he does not *like*: and, in point of *public utility*, that it was neither necessary nor fitting that *any* part of the *rule of action*, much less so important a one, should be lying in any such wild and barbarous state. Such on *this* subject became my opinion, almost as early as, on the subject of *any* part of the law, I could take upon me to have any: but those opinions would scarcely have found any expression, in public at least, and in any considerable detail, but for the incident above mentioned.

Seeing thus that, under the mask of a temporary occurrence, a battery had been opened by the enemies of the constitution upon *the liberty of the press* — that a fire of grape shot had already been commenced, and no fewer than six-and-twenty persons wounded by it at one discharge, — I felt myself urged by an irresistible impulse to summon up whatever strength I might have left; and howsoever impotent my own feeble efforts might prove, and at whatever personal hazard, to show the *way* at least how this battery might be spiked.

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1. Libel law as it stands, or rather as it floats, is incompatible with English liberties.

2. To destroy them utterly, and reduce the government to a despotism, it requires nothing but to be consistently and completely executed.

3. In this state it must remain, until either the constitution is so destroyed, or, by authority of the legislature, certain arrangements are made, the basis of which will be a definition in form, of the sort of thing called *a libel*, or something that shall be equivalent to it.

4. In a fixation of this sort, though there is some difficulty, there is no natural impossibility.

5. It is from the hand of *parliament* alone that this crying evil can receive a *radical* cure.

6. But, in the intelligence and fortitude of a *jury*, it may, in each instance, receive a momentary *palliative*.

7. Things being on this footing, in the case of a *political libel*, and (to fix conception) in the case of a libel for which Mr. Cobbett was convicted, and Mr. Justice Johnson suffered, had I been upon the jury, I should not have regarded it as consistent with my oath and duty to join in a verdict of *guilty*.

8. Applying to this use the power which, under the law of primeval barbarism, any *one* determined juryman has of subduing the *eleven* others, I should have taken care that no such verdict should be found.

9. By a few successive exertions of such fortitude, not only momentary and partial relief against particular oppression would be afforded in each particular instance, —

10. But, by a gentle and truly constitutional pressure, measures of complete and permanent relief might, as from the *unjust* judge in the *parable*, be extorted from the legislature.

Such were the opinions, in support of which I was preparing to submit to the public the considerations by which they had been produced: when, by another incident, this design, though it received a *confirmation*, and that no slight one, received at the same time *a collateral turn*, and, as to *this* part of it, a temporary stoppage.

§ 2. *That Work why postponed to this.*

"Jurymen — special jurymen — are the persons you propose to address. But, whatever you had to say, it being to this effect, is there any the least chance that they would listen to you? The men whom, under the name of *jurymen*, *special jurymen*, you would, on any such occasion, have to deal with — are they in *fact* what they are *said* to be, and in general *supposed* to be? On any occasion, such as that in question, are they really free to follow the dictates of *their own* judgment? Can you see any the smallest probability of their doing so?" Such were the questions suggested to me by the publication of the late sheriff, Sir Richard Phillips — a document which, though it had been for some time in circulation, had not, till a considerable progress had been made in my own above-mentioned work, happened to fall into my hands. Such were the *questions;* and, to my unspeakable astonishment, no sooner were they formed than they received, each of them, to my apprehension, a decided *negative*.

In common with the generality of my countrymen, no particular incident having ever happened to point my attention to the subject, I had been used to annex in my mind to the word *jury*, the idea of a momentarily assembled body of men, composed of members determined by *lot*, or if by a nomination, a nomination not differing in effect from determination by lot, — the nomination performed afresh for the purpose of each cause, the list of the members of which the body was composed in each cause, changing perpetually as between cause and cause.

In this particular I had indeed understood the term *special jury* to be expressive of some difference: but a difference by means of which, the advantage attached to a fortuitous assemblage being preserved, further advantage, resulting from a sort of *reciprocal choice* as between party and party, had, by the matured sagacity of modern times, been superadded.

In common with such others of my countrymen, whose education has conducted them through the *ordinary* paths of *history*, I had read of a species of judicial abuse, which, under the name of *packing*, had on this or that occasion broken out in former times, and in particular in the profligate and arbitrary reigns of the two last Stuarts.

My astonishment has not oftentimes been greater than it became, when, upon looking into the book for which, as above, the public is indebted to the late shrievalty of Sir Richard Phillips, I found that this practice called *packing*, a word which, when thus applied, had never presented itself to my mind but in the character of the denomination of a state crime — nor that exemplified but rarely, and under a disastrous state of things long since past — had been moulded into a *system*, had become an established practice — a sort of *practice* which by the quality of the practitioners has, as *ship-money* had once, acquired the force of *law;* and that in that character it had found, in the person of the chief judge of one of the three great common-law courts, not only an *agent*, perhaps an *author* to avow it, but moreover a *champion* to defend it.

For some time I could scarce give credit to my own eyes. Am I indeed awake? — is not this a dream? — What century is this? — can it be the 19th? — is it not the 17th? —

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Who reigns now? — can it be a *Brunswick?* — is it not a *Stuart* king come, according to the prophetic and once loyal hymn, "*come to his own again?*"

It is but too true. Under the name of a jury — under the name even of that supposed improved species of jury, a *special jury*—we have, in fact, avowedly, in that court in which *most use* is made of special juries, and at pleasure in the only other judicatory in the corruption of which the servants of the crown, and their adherents, can, as such, have any special interest — a *standing* body of assessors, instruments tenanted in common by the leading members of administration, by the judges, and by the other crown-lawyers — troops enlisted, trained, and paid by the crown-lawyers—liable to be cashiered, each of them, at any time, and without a word of explanation, each of them at the instance of any of the above indefinite multitude of *inspectors*, as well as by the hand of the *recruiting officer* who enlisted them, and they know not who besides — tools, *in effect*, of the very power to which in pretence and *appearance* they are a *check*.

Great would be the error, if it were supposed that, so far as concerns the security afforded by *juries*, the higher criminal cases excepted, we are, under this *special jury system*, no worse off than our ancestors were in the time of the two last Stuarts. *Package of juries* was in those times no more than an effort of *casual* violence and passion, losing more by the general irritation it produced, than by the particular advantage of the moment it could gain. It is now, as will be seen, become a *regular*, a *quietly established*, and *quietly suffered* system. Not only is the yoke already about our necks; but our necks are already *fashioned* to it.

As to the *title* of this work, *Elements of the Art of Packing*, it is not a mere jest. In the bringing of the system to its present state, no small degree of ingenuity, it will be seen, has been expended; nor, to the present purpose, could the true nature of it have been sufficiently displayed, without considerable labour — in short, without a pretty ample course of development — applied to its *objects*, its *effects*, its *motives*, and its *means*.

In bringing into view this sinister species of art, the object of these pages is — to do what may be found capable of being done, by an obscure individual, towards putting an end to the exercise of it: and the more thoroughly the processes employed in it are brought to light, the more imperious will the considerations be seen to be, which call for the abolition of it.

By the abolition of *special juries*, if complete, and in point of *local* range rendered co-extensive with the whole kingdom, a sort of *gap* might appear to be left in the system of *jury trial:* on what principles this gap may be most advantageously *filled up*, will be matter of inquiry at the conclusion of the work.

CHAPTER II.

JURIES — THEIR USE AS A CHECK TO JUDGES.

OF the functions exercised by the body of unlearned assessors, termed *jurors* or *jurymen*, the original intention, as well as experienced use, seems to be universally agreed, as well as understood, to be — the serving as a check upon the power of the learned and experienced judge or judges, under whose direction, or guidance at least, they have to act. In name, the decision pronounced in each cause—that decision at least to which the name of *verdict* is given, and in which not only the question of fact is decided upon, but a decision on the question of law (except in the particular case of a special verdict) is involved, is ascribed to them, as if it were theirs alone: but, besides the power of sending the cause to a *new trial* before another jury, the effect of the power exercised by the professional judges is upon the whole so great, (the verdict having in no instance any effect until it be followed by a corresponding decision distinguished by the name of the *judgment*, the formation of which depends altogether on the professional part of the compound judicatory) — that a conception nearer to the truth will be formed, by considering the *main* or *principal power* as in the hands of the *judge*, that of the jury serving as a check to *his* power, than by considering the *principal power* in the hands of the *jury*, that of the judge serving as a check to *theirs*.

That, of the unlearned body so designed to operate as a check, the members ought, so far as concerns the exercise of the functions belonging to their body, to be in a state of independence — of *independence* as perfect as possible — is a proposition included in the very denomination of a *check*. To deny the truth of it, is to utter a contradiction in terms. To say that there ought not to be any such independence, is the same thing as to say that there ought not to be any such check.

In *appearance*, this sort of independence is, in modern practice, everywhere, in every part of the field of jury-trial, actually preserved. That which, on the occasion of each trial, the judge or judges, who constitute the professional part of the mixt judicatory, have power — say, for shortness, the *judge has* power — to do, is to compel the non-professional part, the jury, to pronounce a decision, termed its *verdict:* that which he has *not* the power to do, is to determine *what* that verdict shall be.

Great, however, as is the power of the judge, in every case, over the ultimate result of the cause, yet, so far as concerns the

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decision pronounced, or supposed to be pronounced, by the jury, it applies more directly and certainly to the *prevention* of a verdict *contrary* to his wishes,* than to the *obtaining* at their hands a verdict *conformable* to his wishes.

When, therefore, in pursuance of a sinister interest, in whatsoever bosom it may have happened to it to originate,—*his own*, for example, that of the king, or that of any servant of the king's in any other department of the state, it has come to be an object with a judge to *obtain* at the hands of a jury a *verdict* in any way contrary to justice, a necessary endeavour has been to *obtain a jury*, so composed, as that the verdict pronounced by them may be depended upon as about to be conformable to his wishes: to give, in a word, to the judgment, which he has it in his wish and intention to pronounce, the *appearance* of being the proper and necessary result of an antecedent decision, which, under the appropriate name of a *verdict*, the jury have, by the mouth of their foreman, pronounced, or at least been *considered* as having pronounced.

If, in consequence of any sinister influence exercised over their faculties by the judge, a verdict, different from what would otherwise have been pronounced by them, has been pronounced, that influence will have assumed a very different character, and have been produced by causes of a very different description, according as it is to the *understanding* or the *will* that in each bosom it has applied itself.

To the *understanding* of a juryman, as of any other man, though influences, which, being unfavourable to justice, may be termed *sinister*, are liable to apply themselves from other quarters, yet so far as it has happened to any such influence to have been applied by any act of the *judge*, it is only by his *understanding*—by the application of his relatively stronger understanding to their relatively weaker understandings, that it can have been applied: in a word, it can only have been *the influence of understanding on, or over, understanding*.

When it is to the *will* of the juryman that any sinister influence acting in a sinister direction has been applied by the judge, it is by the *will* of the judge that it has been applied: it has been *the influence of will on, or over, will*.

In so far as the prescriptions of *duty*, the dictates of *probity*, are taken by the juryman for the rule of his conduct, no *other will* is by *his will* suffered to exercise any influence on it: his *will* takes for its guidance the dictates of *understanding* purely: of *his own* understanding, if it feels itself strong enough: if not, of some *other* understanding, on the relative strength of which (relation being had to the question in hand) its reliance is more assured.

To the dictates, therefore, of any other *will*, the will of a juryman, as of any other judge (the lawfully declared will of some lawful superior alone excepted, for which, in the case of the juryman, there is no place,) cannot so much as listen, but at the expense of probity. From whatsoever source it happens to it to flow—whether from the will of the judge, or any other will—the influence, or, as in this case it is styled, the *temptation*, to the assaults of which the probity of the *individual* (in the present case the *juryman*) stands exposed, will apply itself in one or other of two shapes: in the shape of *evil*, viz. ill-applied *punishment*, working by *intimidation*; in the shape of *good*, viz. ill-applied *reward*, working by *corruption*.

Against these two opposite dangers, provision was made in the principles which presided over the original organization and mode of procedure that took place in the case of these singularly-constituted *judicatories*, or rather *component parts* of judicatories.

Against undue *intimidation*, they received for their protection, in the first place, exemption from any infliction which, avowedly and under the name of *punishment*, might otherwise have been applied to any of them

* In this case, in the hands of the judge, the most efficient instrument of injustice may be seen in the principle and practice of *nullification*: by which, considered as applied to verdicts, the effect of them is destroyed, on pretences that do not so much as profess to have any relation to the *merits* of the cause. The pretence has always been the existence of some *regulation*, or (as it is called, to screen its non-existence from notice) some *rule* which, besides that it was never fit to have existence, had never—so far from having been sufficiently notified beforehand, in such manner as to afford to those who were punished for not having obeyed it the possibility of obeying it—had never so much as been in existence. It was on each occasion invented, and set up, for the purpose of the particular injustice that was to be done.

Wrapped up in this device as in a cloak, the power of English judges has, under the semblance of limitation, been in every part of the field of *jury trial* (not to look at present any further) little less than arbitrary: and to this hour, on each occasion, as often as a judge is called upon to use this instrument of iniquity, it is in his power to apply it accordingly, or to refuse to apply it, whichever course happens to be best adapted to his sinister *interest*, if he has any; if not, to his *humour* or *caprice*. [See *Scotch Reform*, Letter I. Devices of Technical Procedure: Devices 9 and 20.]

And, besides being applicable as above, in repugnance to the *main* end of justice, *viz.* giving execution and effect to those rights which have been conferred by law, it has, in pursuit of sinister interest in the shape of *lawyer's profit*, been, and continues to be applied, throughout the whole field of law, in repugnance to the *collateral* ends of justice, *viz.* avoidance of *unnecessary delay*, *vexation*, and *expense*.

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*separately** by the arbitrary power of the judge; in the next place (being that without which the other would have been of little value,) the veil of secresy, to preserve to them, during their conferences, the *faculty*, and (to render it more effectual) the *obligation*, of keeping themselves during their conferences, out of the reach of his observation: and not of *his* only, but of that of all *other men*, and especially all other *men in power*, in whose *enmity* they might be apt to behold a source of *danger*.

Against *corruption*, the principle employed was that of *continual change*: no person being continued in the exercise of that function for any length of time: that so neither the seductive artifices of the judge, their *natural* tempter, who in *their* power had before his eyes a force constantly antagonizing with *his own*, might have *time* to mould into undue obsequiousness the weakness of their minds; nor the *casual* tempter—the party who, in the event of his obtaining anywhere a sufficiently steady view of a future juryman, against whose probity his operations might be directed with a sufficient prospect of success, might find himself disposed to apply the opportunity to any such sinister use.

CHAPTER III.

THE CHECK HOW DONE AWAY BY INFLUENCE.

§ 1. *Checks are ever odious to all persons checked.*

To the welfare of the governed—of men considered as men subject to *power*—it is highly *conducive* at least, if not (as under the British and other mixed or limited governments, men are apt to say) altogether *necessary*, that in whatsoever hands *power* be lodged, *checks* to it, in some shape or other, should, throughout the whole field of its exercise, be applying themselves: and upon the supposition that the *good* which, in the shape of *security against misrule*, is thus produced by the check, is not exceeded by the *evil* produced by the defalcation made by it from the quantity of power necessary to enable the holder of the power to render, in the highest degree of perfection, the service expected at his hands, the *utility* of the check will hardly find any person to dispute it.

But whatsoever be their utility, relation being had to the interests of the *people* considered as subject to power: to *the hands by which the power is holden*, the sensation produced by anything which acts upon them in the character of a *check*, never has been, nor ever can be, otherwise than unpleasant.

* In the case of the now obsolete mode of procedure called *attaint*, a juror could not be proceeded against but in conjunction with all the rest.

How it happened that, in *England*, the operations of the king's ever dependent instruments, the official *judges* (not to speak of the equally dependent instruments of his imperfectly subjected subordinates, the great barons) found themselves, in the infancy of the constitution, incumbered, and to so great an extent, by the presence and interference of a determinate number of unofficial assessors, still more ignorant than themselves; while, in the *other* part of the same island, the incumbrance was confined to the criminal division of the field of law, and even there to the upper parts of the ground; and while, on the continent, either no such incumbrance was ever known, or was at a very early period got rid of; these are among those points of legal history, the obscurity of which seems to have given them up beyond redemption to the arbitrary dominion of conjecture.

Thus much however appears with tolerable distinctness; viz. that, over a great part, if not the whole of that field, over which the jurisdiction of a limited and even fixt number of *assessors*, under the denomination of jurymen *(petty jurymen,)* extends itself, the sort of function now exercised by them was exercised by an unlimited and usually much larger number of the inhabitants of the district in question under the name of *freeholders*: by which denomination were distinguished the whole of that comparatively small number of persons whose interests, according to the notions moral and legal of that time, had any claim to notice: and that, of this larger and imperfectly determinate body, the part now called a *jury*, was a sort of *select committee*, gradually and by general consent, the result of general convenience, substituted to the ever fluctuating and unwieldy whole.

But though, in one shape or other, the incumbrance has, from the earliest days of the existing constitution, been clinging to the shoulders of the official judge, yet, in whatsoever shape it clung, it could not have been otherwise than a troublesome one.

To the free exercise of his *power* the obstruction given by it is sufficiently obvious: for, so often, and in such proportion, as he found it necessary to give effect to a *will* on their part, which, howsoever expressed, differed ultimately from his own wishes, so often, and in the same proportion, was his *power* converted into *impotence*.

Supposing even his *will* to have been in every instance ultimately and completely prevalent, and, notwithstanding the incumbrance, his *power* thus far unimpaired, even thus, on comparing his situation with that of a judge the freedom of whose actions is unrestrained by any such incumbrance, it will be manifest enough, that though his *power* were ever so entire, one effect, inseparably attached to the nature of this incumbrance, is—to afford, in

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one way or other, perpetual disturbance to his *ease*. All their desire is to shape their wills to his, and for that purpose to know what it is. Be it so. Yet to this purpose it may be necessary for him to *make* them know what it is; and simple as it may be, to impress into their minds this article of knowledge will, every now and then, require on his part, one of those operations which cannot always be performed without more or less *disturbance* to the operator's *ease*.

On the other hand, suppose on their parts any reluctance towards the adoption of his will, *argument*, in some shape or other, would on his part be necessary to the *surmounting* of that reluctance; and so much argument, so much time and trouble consumed, so much disturbance given to his ease. Let there even be no reluctance opposed to his will, yet, if in their conceptions there should be any *difficulty* in comprehending it, still, to the removing or endeavouring to remove any such difficulty, *explanation*, in some shape or other, would be necessary: more consumption of time and trouble; more disturbance given to ease.

But to a man in power, it neither then was, nor to this time is, no, nor ever will be, *natural* to submit readily to any such *limitation to his power* as he can commodiously get rid of: it neither then was, now is, nor ever will be, natural to him, to suffer his own *ease* to remain exposed to any *disturbance*, from which he can conveniently keep it clear. To keep it to a certain degree *habitually* clear of disturbance, may, from time to time, cost him more and more *labour*, giving to his *ease* more and more disturbance. But, be his expectations of neat profit, in that valuable shape, verified, or not, by the event, his exertions will not the less truly have had for their motive, *the love of ease*.

On both these accounts, therefore, and in whichever of the two shapes he found the weight of this body of assessors pressing upon him, the endeavours of the judge to shake off or lighten the incumbrance cannot but have been coeval with its existence.

In the character of a sinister motive, becoming, in the bosom of the judge, an efficient cause of injustice, *the love of ease* seems hitherto to have almost escaped notice. But it has not been the less efficient; and of its efficiency exemplification but too extensive will meet us as we advance.

§ 2. *Judges' Defences against Checks — Corruption and Deception.*

Henceforward let us suppose the use of *juries* firmly established: and of the part originally acted by the promiscuous assembly to which this *select committee* succeeded, all distinct remembrance, as well as desire, obliterated: obliterated by this primæval *Grenville act*, of which the record is no where to be found.

For securing on the part of this select body of assessors, whose office was to keep a check upon his will, a subservience as constant and prompt as possible to that will, thereby impairing as far as possible the use and efficacy of that check, three possible instruments, as above brought to view, were afforded by the nature of the case: viz. *intimidation*, *corruption*, and *deception*: for such is the name that may with propriety be given to the influence of understanding over understanding, as often, and in proportion as the exercise of it is recognised as operating to the prejudice of justice.

As to *intimidation*, in the character of an instrument of influence applicable to the purpose here in question, it must, from the very first, have been too plainly incompatible with the acknowledged constitution of this compound judicatory, and too insupportable to the feelings of the people, to be in anything like constant or even frequent use.*

Of punishment applied to this sinister purpose by the sole power of the judge, in the shape of pecuniary *fine* for instance, examples seem to have been not altogether wanting. But, forasmuch as such a practice could not have been permanently *established*, without the utter destruction of the power of juries, the existence of that power is a sufficient proof, that of that suffering, though applied under the name of *punishment*, and by *judicial* hands, the infliction could never have been considered in any other light than that of a casual act, committed under the spur of extraordinary irritation, by illegal violence.†

* *Attaint* was, indeed, terrific enough, involving the utter ruin of all those whose lot it was to suffer under it: but to the sinister purpose here in question it was manifestly unsuitable; for it could not be inflicted on the refractory twelve, without the concurrence of double the number of other jurors, and those rendered by their rank still more highly proof against sinister influence, in every one of its three shapes.

† In the state trials we have a precedent of a judge, a lord chief-justice of the King's Bench, who, to help to satisfy the conscience of a juror, treated him with a good shaking-bout. The time was soon after the restoration, anno 1664: the chief justice, a *Hyde*, a relation and *protegé* of Lord Clarendon's: the defendant, a *libeller*, an anabaptist: the libel purely of the *heretical* class, a class of libels of which happily much has not been heard of late years, at least under that name. It was, however, "seditious and venomous" enough: and the sedition and venom of it consisted in maintaining, contrary to the Liturgy, that the proper age for Christians to be baptized at, was the age the apostles baptized them at — with other abominations of the like stamp.

The juryman, through the medium of whose conscience the consciences of the rest received satisfaction in this mode, had made a visit to the

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Corruption, the work of will operating upon will, and *deception*, operating by the influence of understanding over understanding, were therefore the only instruments affording any promise of being regularly and steadily applicable to this sinister service: *viz.* the securing of undue obsequiousness on the part of juries.

§ 3. *Corruption — Modes of applying it.*

In regard to *corruption*, the standing problem *was*, and *is*, so to order matters, that, on each given occasion in which it may happen to the judge to take on any account an interest in the verdict of the jury, it shall depend upon his *will*, with the surest effect, and with the least trouble possible, to mould it to his own desire.

To this purpose, on the occasion of each verdict, the concurrence of two circumstances was, and is, necessary:—1. That, in the event of their finding themselves in the *situation* requisite (*viz.* that of inhabitants of a jury-box) there should exist a sufficient number of persons *disposed*, no matter by what causes, to manifest the sort of *obsequiousness* requisite; 2. That matters should so have been ordered, that in that requisite situation the persons so disposed should in each instance be to be found.

There are two courses or orders of proceeding, in either of which this supposed unjust, but supposed desired result is capable of being produced:—1. Finding out persons in whose instance the requisite *disposition* is already *formed*, and thereupon placing them in the *situation* requisite; 2. Going to work with a set of persons already stationed in the *situation* requisite, and to the persons, so situated, giving the *disposition* requisite.

The first of these two courses is that which, having been invented in the time of our ancestors, in a somewhat distant age, has from them received the name of *packing*:—a name which, from the application at that time but too frequently *made* of the practice, and thence habitually apprehended from it, has acquired a *dyslogistic* tinge: serving at present to express, not merely the *practice itself*, but the sentiment of *disapprobation* excited by the idea of it, and thus, by the principle of association, attached to it.

Of the two courses, this ancient one is evidently by far the most simple.

In the other may be seen an example of a degree of refinement reserved for modern times:—"A number of persons whose dispositions, in regard to the subject in question, are as yet unformed or unknown, being collected — required to generate in their breasts the disposition requisite." Such is the problem, the solution of which was necessary to the pursuing of this second of the two courses. And, with what success it has been accomplished, will ere long, it is supposed, be not indistinctly visible.

For this purpose, the following process stands alike approved by theory and experience:—

Into the situation in question (it being a situation conferring power — legal power) cause to be placed the number of persons requisite (they being provided with the requisite legal qualifications) — you possessing in your hands, to a certain extent, the faculty of influencing their interest or welfare (that is, producing in their respective bosoms the sensation of pain or pleasure, or the eventual absence of either) — and no *preponderant* force acting on the same bosoms in an opposite direction: these things being done, the exercise of that power is thereafter at your command: and this, whatsoever be the name given to the act of power so exercised — such as *verdict*, *judgment*, *decree*, *sentence*, *vote*, *resolution*, *statute*, *law*.

In the science of *psychological* or *moral dynamics*, of which *political* is one branch, the above proposition, though never yet perhaps reduced to any scientific form of words, may be stated as a fundamental axiom: and among public men, under whatsoever degree of incapacity labouring in other respects, no man was ever yet found to any such degree weak and incapable, as not to be sufficiently sensible of the truth of it.

A man may receive his ten, twenty, thirty, any number of thousand pounds a-year, on pretence of his occupying a *writing clerk's* place, and this without being any more *able* than he is *willing* to do the duties of that place — and yet be no less fully and adequately impressed with the truth of the above proposition, long-winded as it is, than Bacon was, and accordingly not only act, but get up and speak, according to his mode of speaking, in exact conformity and consequence: the orator, without parade or pedantic display of hard-

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bench, and as it should seem by deputation from his fellows: permission had been granted, in consequence of their "desire to know whether one of them might not come and speak with his Lordship, about something whereof they were in doubt." "Then the officer called *one*" (quere, by whom named? — must it not have been by the judge?) "and he was set upon the clerk's table, and the judge and he whispered together a great while; and it was observed that the judge, *having his hands upon his shoulders, would frequently shake him as he spoke to him.* Upon this person's returning, the whole jury *quickly came in*, and being according to custom called over by their names, the clerk proceeded:—

"*Clerk* — Are you agreed in your verdict?

"*Jury* — Yes, yes. 2 St. Tr. 553."

The unanimity thus promptly produced, — by which species of influence was it produced? by the influence *of will over will*, or by the influence of *understanding* on *understanding*? Perhaps partly by the one, partly by the other.

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worded science, acting *psychological dynamics* all the while, and to no less perfection, nor, if told of it, less perhaps to his surprise, than Monsieur Jourdan, when upon being thereof informed by his preceptor, he found himself talking *prose*.

For effecting the solution in question by the application of the above axiom or rule, the simplest and most elegant of all modes which hath as yet been invented—perhaps it may be added, which the science itself admits of—is—that which you are enabled to put in practice, when the functions attached to the situation being, by a mass composed of the matter of wealth or other objects of desire (instruments or efficient cause of pleasure of any sort at command, according to each man's taste,) worked up into a compound of an agreeable flavour, the continuance of the person in question in the situation which enables him to feed upon it, has been made dependent on your will. So long as he continues in the situation, with such his allowance in his hand, he will continue to feed upon it in his heart—if not with thanksgiving for having been put into the situation—at any rate, what is most to the purpose, with fear of being put out of it, in the event of his comporting himself otherwise than as expected.

Suppose, for example, the situation of a *juryman* thus at the same time dulcified, and (saving dismissal) *fixed:* the power of *dismissal*, howsoever disguised (and the more effectually disguised the better,) being at the same time in your hands: upon the very face of this statement it is evident, that (barring the accident of opposite and preponderant force as above mentioned) the verdict of the jury, so far as depends upon that juryman, is altogether at your command.*

In this mode of solution, a necessary step, we see, is the placing the person in question in a *situation* in which he is exposed to the action of the efficient cause of influence: *viz.* the matter, the ever pliant and ductile matter, which, in your plastic hands, becomes the matter of *reward* or the matter of *punishment*, according as he behaves himself. But, to the situation, as above described, *permanence* is necessary: and this—partly because without a certain degree of permanence, the situation would not possess sufficient value, nor consequently the fear of losing it act on his mind in the character of an efficient cause of influence with a sufficient degree of force: partly because the correspondent disposition—viz. a disposition duly prepared to yield to the influence—the *obsequiousness*, in a word—may not always be capable of being produced in an instant, as in the case of *casting* or *stamping*, but may now and then require some length of *time* for the production of it, as in the case of *modelling* or *sculpture*.

Here then we see the difference between the *ancient* and the *modern* contrivance for nullifying *checks*, and producing *acceptable verdicts*. In the *ancient* mode, it was necessary that, in the instance of each juryman, the disposition to obsequiousness should be ready formed. On the other hand, wherever this condition could be, and was fulfilled, the business was the work but of an instant, nor was any application of influence necessary to the accomplishment of it: in the *modern* mode it is *not* necessary, that the disposition to obsequiousness should, in the first instance, be already, as in the *ancient* mode, completely formed: nor even that, at that period, it should, in any degree, have existence: but what *is* necessary is, on the part of the situation in question, a considerable degree of *permanence:* understand always *eventual* and defeasible permanence.

The two modes stand thus distinguished by the two different principles, on which their efficiency respectively depend:—the *ancient* mode, by the principle of *choice*—of *selection*—or, to call it by its established and proper name, the principle of *package*—*simple package*—package *toties quoties*, and without need of *permanence:*—the *modern* mode, by the principle of *permanence:*—thence package, once for all, and with the benefit of permanence.

In the last preceding chapter, mention was made of the principle of *mutation*, or continual *change* of persons, as one of the expedients employed in the original constitution of juries, for enabling them to act with effect in the character in which they were destined to act, viz. that of a check upon the power of the judge; and, in that view, for securing them against any *sinister influence* by which the *efficiency* of the check, so to be applied, might come to be *impaired*. The principle there mentioned, under the name of the principle of *permanence*, consists exactly, we see, in the absence or removal of that tutelary and fundamental principle.

The principle of *permanence* being thus palpably opposite to one of the essential and acknowldged principles of *jury trial*, to have established it *directly* and *avowedly* would have been plainly impracticable. For each court, for instance, a determinate number of jurymen, consisting of the number (twelve) necessary to compose a jury, with or without a few supernumeraries, added for provision against accidents—to each juryman his situation, whether by salary or fees, rendered

* *Corollary.* In the same manner, and with the same mixt-mathematical certainty, the required degree of obsequiousness may be generated, in the bosoms of persons in any number, in whatsoever other situations placed, and by whatsoever other names denominated: *ex. gr.* commons, lords; members of a conservative, legislative, or any other sort of senate.

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a desirable one — he, at the same time, pronounced removeable — avowedly removeable — at the pleasure of the judge or some other dependent of the crown; — on any such plan, even in the most uninformed and incurious age, the continuing to the institution the name of *jury* would scarcely have sufficed to reconcile men to an arrangement so palpably perverse — thus destructive of its manifest and manifestly intended nature.

When a determination to subvert, as far as it might be found practicable and convenient, this part of the constitution, had been taken, whatsoever were the contrivance employed, it was seen to be altogether necessary there should be some disguise or other put upon it. The business was neither to be attempted *openly*, nor *all* at *once*.

Four distinguishable conditions were seen to be necessary: — 1. Power of *nomination* virtually in the hands of the *judge*; 2. *Emolument*, sufficient in *magnitude*, and thence in *ordinary duration*, to render the situation an *agreeable* one, and thence the *loss* of it an object of *apprehension*; 3. Power of *amotion*, viz. of removing a man from that situation, also virtually in the hands of the judge; 4. In each case, the design so enveloped, as not to be seen through. All these points were accordingly accomplished.

One point more required to be attended to. To have attempted to apply any such plan of deceit to all cases, and all at once, would have been incompatible with the success of it: — for, the *effect* being produced in every instance, the *efficient principles* would have burst through the disguise.

Applied to all cases in which it was likely that the judge, or any of the servants of the crown, his confederates, would have any special interest, it would be sufficient to their purpose. To the object thus limited, the plan was accordingly confined: and thus far it has been accordingly found to be but too practicable to carry the design into effect, and without prejudice to the *disguise*.

Of all these several *desiderata*, the accomplishment will now be brought to view, as having been effected in and by the constitution of the sort of body termed a *special jury*: but, for the purpose of this exhibition, a separate chapter will be requisite.

Compared with that mode, in which the principle employed is no other than that of *simple package*, nobody, it is supposed, can be at a loss to see how prodigious the advantage is which is gained by calling in the principle of *permanence*. In the way of simple package, *extempore* package, everything requires to be done afresh each time: each time you have to hunt out for your men: and whereabouts are you, if so it be that at the moment none that will suit you are to be found?

Apply the principle of permanence, there they are — your men — always at hand: and the longer you have had them where they are, the surer of them, on each occasion, you may be.

Juries, packed in the *old* mode, are like *wood-pigeons*, for which the *woods* must be hunted ere they be in a state of requisition for the cook; or like those *wild horses* which a *Spanish Creole* has to scamper after in the *plains* ere he is in readiness to take his ride. Juries packed in what will be seen to be the *new* mode, packed with the advantage of the principle of *permanence*, are like pigeons taken out of a *dove-house*, or like those well-broken *geldings* which an Englishman keeps in his stable.

In *juries*, in a word, *permanence* is exactly what it is in armies: it is the work of the same policy in both cases. It was, when as yet there were no *standing armies*, that the coarse and precarious operation of extempore package, *packing* without the aid of *permanence*, was employed in the case of juries. As our *armies* acquired their *stability*, so did our *juries*: and now that, under the pressure of national necessity, our armies, strengthened by that principle, have swelled to so unexampled a magnitude; now it is, as will be seen, that without any such necessity, without any other more cogent cause than *convenience*, numbers in juries not being susceptible of increase, this part of the establishment has received its improvement, and that to the degree of perfection that will be seen in the shape of *permanence*: say *permanence*, but never without remembering the increased facilities it affords for *package*.

Convenience, and nothing more. But what more was needful? For it was the convenience, as we shall see, of *great characters*, in those *high situations*, in which, in the *convenience of the individual*, there is apt to be more of *cogency* than in the *necessity of nations*.

At the outset, packing having been practised, when as yet there was in juries no such thing as *permanence*, the principle of *package* came unavoidably to be spoken of antecedently, and thus far in contradistinction to the principle of *permanence*. But now, at this stage of the inquiry, it will be sufficiently apparent (it is hoped) that of these two principles one is included in the other: and that, by the principle of *permanence* as applied to juries, is to be understood *permanence* and *package together*: package with the benefit of permanence, and permanence for the purpose of package.

§ 4. *Deception — Modes of applying it — Instruments for the application of it.*

Corruption being the instrument principally employed on the occasion which gave rise to

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this little treatise, *deception*, an instrument not more in use on this occasion than on any other; and the part here played by it no more than a subordinate one — a very slight mention of it will be sufficient here. Not that the mention of it will even here be altogether out of place, corruption having among its effects that of disposing a man not only to deceive others, but, moreover in the first place, and for the better quieting of his own conscience, to deceive himself.

On the present occasion, so far as deception is concerned, the problem stands thus: — In cases where, if the conception entertained of the case by the jury were adequate, viz. *complete* and *correct*, their *will*, as declared by their *verdict*, would be more or less apt to run counter to the *will* of the *judge*, so to order matters, as that, by means of some want of *completeness* or *correctness*, viz. on the part of the conception entertained by them of that case, it may happen to their will to coincide with that of the judge.

There are two ways, in either of which an effect thus desirable may be brought about:

One is, by causing them to have a will, and that will exactly the same with that of the judge.

The other is, by causing them not to have a will, viz. of their own forming: of which state of mind the necessary consequence will be their *adopting*, without more ado, whatsoever *will* may come to be presented to them for that purpose by the judge.

Of these two modes, this latter mode is by far the most advantageous one. To the success of the former, the creative or special, it is necessary that fresh labour should be bestowed upon the subject on the occasion of every cause: by the other, the preventive or general mode, the business is done once for all; and, without any fresh expense in the article of labour, a perpetually renewed harvest of success is reaped on the occasion of each individual cause: in the one case, the business is carried on in the retail, in the other, in the wholesale line.

In the case of corruption, the will of the party corrupted — here the jury — being formed by the will of the party by whom or for whose benefit the matter of corruption is applied; the state of the intellectual faculty is immaterial, nor is any sort of debility in it necessary to the production of the effect here supposed to be desired.

But where, in a question of fact or law, a will of his own is to be formed by a man, who having no natural interest at all in the business, has no interest at all in it, unless by means of corruption he has a factitious one, he cannot have a will, other than one to the formation of which the use of the understanding is necessary: and thus it is, that, if so it be that his own understanding is not, with relation to the matter in hand, in a state fit for use, that is, capable of being applied to use, he is not only content but glad to borrow one of the judge, whose care it is that, under the *cover* of an act of the understanding, a *will* of his own, more or less nicely folded up, shall be inclosed.

By the understanding of a person placed in the situation of judge, an influence will, of course, be exercised over the understanding of every person standing in any such situation as that of juryman: and this influence being on all occasions applicable to all purposes good and bad, is thereby applicable to all bad ones.

On this occasion, the part which is open for *deception* to act is the giving to this influence a degree of strength beyond what properly belongs to it — such a degree of strength as will enable it, upon occasion, on the spur of sinister interest or passion, to act with advantage in a direction opposite to that of the *dictates of justice*.

In another work (*Scotch Reform*, Letter I.) it has already been shown how completely opposite the *interest* of all *judges*, commonly called by that name, as well as of all other men of law, has, throughout their whole field of action, all along been, and still continues to be, to the *duty* of judges, which is as much as to say to the *interest* of the *people*, in respect of the ends of justice: not only this fact, but the cause of it, viz. an ill-chosen mode of remuneration, has in that same work been already brought to view. Of this opposition the cause and influence having as yet in a very small, if in any degree been understood, the whole course of action of these functionaries has consequently been a course of deception: of deception practised throughout that whole course of action, on all sorts of occasions, and upon all sorts of persons: upon individuals at large, in their character of *suitors:* upon jurors, in particular, in their character of jurors.

Of the two modes of deception, *special* and *general*, the general has already been shown to be in every respect by far the most convenient with reference to the present purpose. The general consists in forcing the people with whom you have to do, to borrow your *understanding*, and under the cover of it, your *will*, by preventing them from having any *understanding* fit for use, and thence from having any *will* applicable to the purpose.

On this occasion the system of deception divides itself into two branches — the first consists in rendering the subject — whatever it be, law, religion, anything — in the present instance law, as incomprehensible, or (what is the perfection of incomprehensibility) as uncognoscible as possible to all whom you have to deal with, and that to their own conviction and satisfaction.

The other consists in doing whatsoever the nature of the case admits of, towards raising

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in their minds, to as high a pitch as possible, the estimate formed by them respectively of the correctness and completeness of the knowledge possessed by yourself in relation to the same subject.

To the first end contribute, jargon, nonsense, absurdity, surplusage, needless complication, falsehood — every kind of intellectual nuisance, in every imaginable form: and this the higher in degree and greater in quantity the better, without any other restriction than what may be imposed by whatever caution may be necessary to enable you to avoid counteracting the other object last above mentioned.

Of these two branches of the art of deception, the first-mentioned may be termed the *depressive or humiliative;* the other the *self-exaltative.*

The instruments applying or applicable to the purpose of deception, as above distinguished, may be the more readily comprehended by being distinguished into two classes. Those of the one may be termed the incorporeal instruments of deception: and though, upon a principle of division and nomenclature already attached to the subject, a complete enumeration of them would perhaps be scarce practicable, a tolerably sufficient sample of them has just been given; *viz.* in the words *jargon, nonsense, absurdity,* and so forth.

For the designation of the instruments of the other class of these instruments, the term *corporeal* will of course present itself to the mind of every man who has read Blackstone.

Under the class of corporeal instruments may be comprehended, besides the *posts* or other *uprights* by which the level of the *bench* is elevated above that of the *jury-box*, the peculiar *habiliments* by which the profession and the office together stand distinguished: outward and visible signs of the inward and invisible graces and virtues, intellectual and moral, that dwell within. These last, in consideration of the incalculable influence which they are found to exert on the understanding of jurors and others, through the medium of the imagination, may be moreover termed instruments of *fascination*: and as, among heathen statuaries, the circumstance of a man's having officiated with his own hands in the character of his own god-maker was not found to diminish his devotion towards such his god, so if, among the inhabitants of the same jury-box, it should happen to the makers of the several instruments of fascination, *viz.* the furrier, the tailor, and the peruke-maker, to find themselves assembled and met together, there seems no reason to suppose that, upon the minds of these several manufacturers, the influence of the several articles, in the character of instruments of fascination, would be less efficient than upon those of the other "good men and true," their colleagues.

Of these corporeal instruments the importance is the greater, inasmuch as but for them, and the fascination produced by them, it seems not altogether easy to conceive how the first branch of the art should have been compatible with the second, and how the stock of jargon, nonsense, absurdity, and so forth, how abundant soever, should have been conducive to, or even compatible with, the design of raising, in the minds of the persons concerned, the idea of the stock of real knowledge possessed by those exalted characters by whom these incorporeal instruments of deception have ever been so liberally employed.

Both sorts of instruments, incorporeal as well as corporeal, may moreover, if not in a strictly legal sense, as savouring rather of the personalty than the realty, yet at any rate, to a common intent, be styled and entitled hereditaments.

In relation to the corporeal hereditaments, the instruments of fascination, two things ought, notwithstanding, to be observed: one is, that the fascination performed is performed by the intrinsic and independent virtue of the instruments themselves, and that to the bearer, nothing being on his part performed, or necessary to be performed, towards and in relation to the effect, no part of the effect ought to be ascribed or imputed: the other is, that were it not for the evil company they are connected with, viz. that of the incorporeal instruments above mentioned, and the evil purposes to which the whole company are so unhappily apt to be applied, the influence of these corporeal instruments, notwithstanding the name of *fascination* so incontestibly belonging to it, might well be salutary and beneficial upon the whole. It is only by the abuse, in so far as abuse is made of them, that they operate in the character of instruments of deception — the character in which they belong to the present purpose: and if these corporeal were separated from the incorporeal instruments and hereditaments above mentioned, viz. the jargon, nonsense, and so forth, the *abuse* of the corporeal ones would be separated from the use.

Of these several instruments of influence, to whatsoever purpose applied, that of deception or any other, the efficiency in that character will (it may be said) naturally be the same — nearly if not exactly the same, whether, in the constitution of the jury in question, the principle of permanence be or be not employed.

This may be admitted. One means of influence, however, there remains, coming under the head of influence of understanding on understanding, which is applicable with peculiar advantage to the purpose of deception, and which requires, as a necessary condition to its application, the application of the principle of permanence.

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When the judge and the jurymen become acquainted with each others' persons, being in a state of habitual intercourse, a sort of connexion, though it be but in the way of sympathy, grows up between them: a friendship which, though it be of that kind which has been called a *friendship of inequality*, a friendship betwixt the superior and the inferior, betwixt wisdom and simplicity, is not, to this purpose at least, the less powerful and effective. A look of complacency, indicative of old acquaintance and mutual good understanding, descending, if ever the dignity of the judge finds itself reduced to descend to such benignity, from the heights of the bench upon the leading man in the jury-box, the bellwether is gained — the flock follow of course. A sort of compact forms itself, under and in virtue of which the man of learning engages to afford direction, the child of simplicity to follow it: this compact once formed, the presumption, which on any particular occasion should presume to think and act for itself, would be an act not only of temerity, but of revolt and perfidy.

CHAPTER IV.

SPECIAL JURIES, A SPECIAL ENGINE OF CORRUPTION.

§ 1. *The System briefly stated.*

WE have seen what expedients the nature of the case affords, for moulding juries into *obsequiousness*, principally by means of *corruption:* and thus divesting, as much as may be, of all *reality*, the *appearance* which they exhibit of a check to the arbitrary power of the judge.

We now come to speak of the *instrument* or *engine*, contrived for that purpose; applied to it, and to this day continuing to be applied to it, and with what disastrous success will be seen as we advance. This engine, in no small degree a complicated one, is no other than the sort of jury termed a *special jury*.

A *special jury* is so termed to distinguish it from a *common jury:* this last name being reserved for the designation of the only sort of jury which, till the invention of this special instrument of corruption, was in existence.

Above has been brought to view, in the character of a *possible* one, an arrangement, by means of which (bating such rare and casual exceptions as are liable to be now and then produced by the irregularities of the human mind) a body of men, be they who they may, may be brought into a state of constant and complete *obsequiousness* to the will of some person or persons (in the present instance the judge,) between whom and them the requisite sort of relation has, in the manner there indicated, been established. In the case of a *special jury*, this *possible* arrangement will be found to have been, and to remain to this day, completely *realized*.

As of the *true* and *original* jury, so of this *impostrous modern* substitute, the *origin* lies buried in obscurity. *Human craft* in every shape, and, in particular, in the shape of *lawyer-craft* — human-craft, like the *mole*, hides its ways from the light of day, and, as completely as possible, from human eyes.

The clearest view, as far as it goes, that we possess of this sort of jury, is that which is afforded to us by the *statute-book:* and, in the statute-book, antecedently to the year 1730, being the third year of the last reign, no mention of it is to be found. In a statute passed in that year (3 Geo. II. c. 25) the sort of jury in question is spoken of, in the way of reference, as a sort of tribunal actually in use: — finding it already in existence, all that the statute does with it is to *regulate it*.

In the way of *amendment*, this act was, in the course of the same reign, followed by four others or parts of others: *viz.* 4 Geo. II. c. 7; 6 Geo. II. c. 37; making perpetual 3 Geo. II. c. 25; 24 Geo. II. c. 18; 29 Geo. II. c. 19.*†

In each judicatory (*viz.* in each of the three Westminster-hall jury-trial courts — King's Bench, Common Pleas, and Exchequer,) is the hands of an officer of the court, the right-hand man and dependent of the chief judge,‡

* The oldest *book of practice* (such is the denomination used, among lawyers, to denote the books, in which a statement is given, of the operations and instruments in use, in the different judicatories, in the course of judicial procedure) — the oldest book of practice, of which any mention is to be found in the law catalogues, is *Powell's Attorney's Academy*, London, 1623.

In that book, no such appellation occurs as that of a *special jury*, p. 141. *Eighpence* a-head being stated as the fee allowed to the jurors at *Nisi Prius*, in Guildhall, London; *fourpence* a-head is stated as the fee given to those to whom, in case of a deficiency in the number of regular jurors returned in the writ called the *Habeas Corpora Juratorum*, it happens to be *added* to them, in the character of *tales-men:* at length *tales de circumstantibus*.

At present, the denomination of *tales-men* is applied to such *common jurors*, as are employed to fill up casual deficiencies in the number of *special jurors;* but, *at that time*, they were but so many men taken (as their name imports) from the *by-standers*, to fill up the like deficiencies in the number of *common jurors*. On this occasion mention may be seen made of an important office, *viz.* that of "*my Lord's Foot-Cloth Servant:*" who of course would not be left unprovided with his fee. And what would any one imagine was that fee? Answer — Half as much again as that of a *regular* juryman; thrice as much as that of a *tales-man*. For the purpose of tracing out the first mention made of special juries, it would be matter of curiosity at least, to examine the intermediate books of practice between 1623 and 1730.

† *Vide*, for alterations since made, p. 163. — *Ed.*

‡ [*Right-hand man of the judge.*] In the *King's Bench* two *masters:* one on the *crown* side, the other on the *civil* side; in the *Common*

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this cluster of acts (to consider them together) found the effective nomination of these assessors, by whose power that of the judge was in *appearance* to continue checked. Such are the hands in which King, Lords, and Commons found the faculty of reducing to a shadow the controul supposed to be exercised by a jury: and in the same hands, under the direction of their learned and essentially treacherous guides, in these same hands it has been left.

In the hands of the *agents of the parties*, in *crown* causes, the solicitor of the crown, acting under the direction of other servants of the crown, his superiors, they found the faculty, and the practice, of giving to each special juryman a fee, to an amount altogether *unlimited:* whether it was or was not in their practice, or in their power, to keep back the fee, till after he had earnt it to their satisfaction, does not appear.

In one of these acts (24 Geo. II. c. 18, sec. 2,) reciting that "complaints are frequently made of the great and extravagant fees paid to jurymen under the authority of the said recited acts," parliament did indeed attempt to limit this fee, *viz.* to the sum of a guinea: but with how little success may in due season be observed. (Part III. ch. 2,) This guinea, however, was not merely a guinea for *each day* of service, but a guinea for *each cause* tried in the compass of that day: and to the number of such causes there was no certain limit: nor therefore to the number of daily guineas.*

§ 2. *The Corruption briefly indicated.*

Such, so far as could be exhibited by a rough outline, and upon a small scale, *was* and *is* the actual state of practice. Now, in respect of such matters as *influence*, *corruption*, and *obsequiousness*, let us, upon the same scale, observe the fruits and *consequences*.

By means of the *magnitude* of the *fee*, and the *situation* of the *hands*, on which, on the occasion of *each individual cause*, it was thus made to depend by what individuals this mass of emolument should be received, a *regular corps* had thus gradually and secretly been established — the members *nominated* in all cases by the dependent of the judge; that is, in effect, by the judge himself — paid in private causes by individuals, but in *crown* causes by the *servants of the crown:* a body of troops, taking its orders, in *private* causes, from the *judge alone* — in *crown causes*, also immediately from the judge, but in effect from the *judge* and the *other servants of the crown* in conjunction, according to any agreement which in each instance it happened to them to have made. And thus it is that, in a Westminster-hall court, in a crown cause, including almost all causes in which the members of government, as such, are liable to take any real interest — the fate of the defendant rests altogether in the hands of the dependent set of jurors thus picked out from the rest. So much as to the *fact* of the dependence: now as to the *degree*. Of the occupier of any lucrative situation; of the placeman who, by any formal notification, is liable to be at any time removed from his situation — removed by an officer, who himself is liable, in the same manner, to be dismissed by the king or any of his servants, the dependence is commonly considered as standing at the *highest* point in the scale of strict and perfect discipline. But a point still *higher* is occupied by the sort of dependence which, in the manner we have seen, has place in the case of a *special juryman*. For, by the formality of express dismission, the attention of the public mind is naturally, with a degree of force depending on existing circumstances, pointed to the incident; and in some cases, disapprobation from that quarter is in a greater or less degree liable to be incurred: but, in the case of a special juryman, let drop out of the list for lack of obsequiousness, the right hand of the official agent of corruption scarce knows the deed, the negative deed, thus committed by his left.

§ 3. *The System further developed.*

Such is the general result. By a few explanations, the conception obtainable of this mystery of iniquity may be rendered more distinct and particular, though, to any practical purpose, the proof need scarcely, nor perhaps can it, be rendered more conclusive.

The choice made, as above, by the immediate instrument of the judge, is not abso-

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Pleas, two *prothonotaries:*[a] in one branch of the *Exchequer*, a *deputy-remembrancer:* in another, a *deputy-clerk of the Pleas*, called also the *master*. For, in the judicial chaos, as all manner of different things go by the same name, so does the same thing go by all manner of different names.

* [*Daily Guineas.*] Times newspaper, 16th December 1806 — "Yesterday morning, in the court of King's Bench, Guildhall, *eight* causes for *special* juries appeared in the list for trial. They were all referred: in one only a verdict was taken, *pro formâ*, for the plaintiff." *See Scotch Reform, Letter* IV.

[a] *The following note occurs at Chap.* 8 *of the original edition:* —

"I embrace this opportunity of correcting a mis-statement, the cause of which lies, in some measure, in my present inability to supervise the press: a mis-statement which, though with reference to the argument altogether an immaterial one, might perplex the reader by the inconsistency it presents, if not set right. When, with allusion to the sort of business done by Talleyrand under Napoleon, I designated these master packers by the appellation of *grand electors*, and with the number *six* before them, (see p. 79,) it was in pursuance of a false recollection, which, at that time, represented the number of prothonotaries as no more than two."

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lutely without its limits; but, by the limits which it finds, no bar whatsoever, it will be seen, is opposed to such a choice as can ever fail to be fully adequate to every desirable purpose.

1. In the first place, forming the basis of all subsequent operations, comes what may be termed *The qualified list.*

On the foot of the primeval practice, settled before the distinction between *common* and *special* jurymen was devised, the members of the list which served as the general fund out of which jurymen were drawn for the purpose of each cause, were, and are, in each township, named by the *constable* of the township, on the supposition of their being possessed of certain pecuniary and other qualifications, fixed upon by law. By the sheriff of the county, these *elementary* lists were, and are, collected into one aggregate, which, as above, may be termed the *qualified list — the common and special jury qualified list.*

2. By the same hand, out of this list a *selection* is made of such persons as, under the clauses in the acts relative to *special juries*, are regarded as being provided with the *special qualifications* appointed by these acts. The minor and included list, thus formed, may be termed *the special jury qualified list.* The persons thus distinguished from their fellows, and by the distinction qualified for being, in the character of *special jurymen*, employed by the *master*, the judicial officer above mentioned, are in the constable's books designated by the title of *esquire.* *

3. Among the members of this *special jury qualified list*, persons whose *names* are lying constantly before him, and with whose *characters*, their number being so much smaller (I speak of those for Middlesex, about 400†) he is at least as well acquainted as the Chancellor of the Exchequer with those of the members of the House of Commons — this right-hand man of the judge,‡ this *master*, this *master packer*, as he may be termed, chooses on the *occasion*, and for the purpose of each cause, 48.‖ Of these 48, the list may be distinguished by the name of *the gross occasional list.*

4. From this *gross occasional list*, the agent of the party or parties on each side of the cause, has the power of discarding 12: which faculty (the agent having of course his fees for it) will, in the natural order of things, of course be exercised.§ But if, to this natural order of things, so on any occasion it should happen, that an exception should take place, then, and in such case, it is by the *master* packer that the defect is supplied, and the operation of discarding performed.

5. Be this as it may, of the remaining 24 is constituted what may be termed *the reduced list.*

Of each of these 24 the attendance is, or at least ought to be, required by the sheriff by a *summons*, issued in obedience to an *order* or *precept*, which contains the whole *reduced list*, and has been previously transmitted to him from the court.

6. The number actually *serving* on a jury being no more than 12, the object in view in summoning the 24 is to secure the appearance of half that number. Of those who, on any given occasion, actually make their appearance accordingly, the list may be termed *the actually appearing or attending list.*

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* Phillips, p. 153, 160.

† Ibid.

‡ In *Edmunds's Solicitor's Guide* to the Practice of the *Office of Pleas* in the *Exchequer*, London 1794, are divers *bills of costs*; in one of which the case of a *special jury* is introduced. In this part of the bill (p. 119) one of the items runs thus:—"*Paid the master*," (the familiar name here given to the officer whose proper official title (see 27th Finance Report, p. 210) is *deputy-clerk of the pleas*)—"Paid the master, on *naming* the 48 special jurors, £2, 2s." Another runs thus:—"Attending and *inquiring into the connexions*, &c. of the 48 jurors, 6s. 8d." These 48 are the 48 nominated by the *master packer*, and composing, as above explained, the *gross occasional list*, from which the deductions of 12, by the agents of the parties on each side, are allowed to be made. But *of whom* should the *inquiry* be made but of the *master packer*, who is thus *attended*? For it is at *his* office that the several *attendances* charged in this part of the bill are, every one of them, paid: and *to what purpose* make the inquiry, if the official person of whom it is made were not, by his *acquaintance* with the "*connexions*," &c. of these jurors, in a condition to answer it? Possessed of this knowledge, and therefore capable of giving the benefit of it to all such persons, in "high situation," to whom it may be agreeable to produce a proper title to it? In "high situation," such, for example, as the constellation of luminaries, for the barking at whom Mr. Cobbett and Mr. Justice Johnson were prosecuted and convicted. See further on, chap. 8.—*Note*, that, in this *bill of costs*, the cause is supposed to be a *country* cause: yet, for learning the "*connexions*," &c. of the jurors, it is not in the *country*, where their residence is, but *in town*, *viz.* at this *packing office*, that "*the inquiry*" is stated as being made.

If the office be thus capable of serving as an intelligence office in the case of country gentlemen, whose residence is in *Cornwall* or in *Cumberland*, how much more complete may not the information be expected to be when the subjects of it are *guinea-men*, all living in, or in the *near vicinity* of, the aggregate metropolis?

‖ Crompton and Sellon's Practice of B. R. (civil side) and C. B. 1. 437. Tidd's Practice of B. R. (civil side) p. 725. Impey's Practice of B. R. (civil side) p. 239. Hand's Practice of B. R. (crown side) 1805, p. 10. Edmunds's Practice of the Exchequer (pleas side) pp. 73 - 119.

§ The solicitor for the treasury having a salary, receives, it is supposed, no fees, but, for the exercise of the faculty in question, adequate inducements, in other shapes, do not in that quarter seem very likely to be wanting.

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7. Be the number *actually appearing* what it may, the 12 whose names stand first upon the *reduced list*, are the 12 that serve. Of these the list may be termed the *serving list*.

If not so many as 12 make their appearance, then so many as do appear being put upon *the serving list*, the rest are taken from among such persons as happen to be in attendance in the character of *common jurors*.*

On the face of this statement, nobody surely can be at a loss to understand how nugatory the power of *discarding*, though allowed to both sides, is, in the character either of a *bar*, or so much as a check, to any sinister choice, which the right-hand man of the judge, the master packer, under all the sinister influence to which, in some cases, his principal stands exposed, may be disposed to make.

The *whole* 48 being alike at his devotion, alike the creatures of his choice, what matters it to him which of them are the twelve that serve?

8. Of all these several lists, though not as yet distinguished, any of them, by names, viz. neither by the above nor by any others in current use — the existence is neither unknown nor disavowed, nor so much as endeavoured to be concealed.

But another list, the existence of which, though it scarcely would be avowed, is not the less real, and to which suspicion has, it will be seen, already fastened a sort of *nickname*, is a list which, in the style of sober sadness, may be distinguished by the appellation of the *select and secret qualified list*. It is a list, composed of such members of the *gross qualified list*, as by the *grand elector* so often mentioned — the *Talleyrand* of the respective courts — are regarded as sure men: men who, being qualified for dependence, may accordingly be themselves depended upon; and from among whom, upon each occasion, the *gross occasional list*, required for that occasion, may be securely taken without fresh expense of thought.

§4. *The Corruption and Dependence developed.*

These seven† grand electors, have they, each of them, a separate list of this kind? or does one such list serve for them in common? The answer is among those mysteries which must, in a great degree, remain involved in their original darkness. What, as will hereafter be seen,‡ is *certain* is, that in and for the use of *the Exchequer*, a list of this sort exists; — exists with or without a name: what will appear *probable* is, that if there be not a distinct list of this sort kept in and for the use of the *King's Bench*, the Exchequer list is occasionally resorted to for King's Bench service.

Of these secretly enlisted, and, though without words of command publicly delivered, not the less perfectly disciplined troops, the *number* is of course not known.

But so well is the *nature* of them known, that it has obtained for them a familiar name: the corps being termed, *the Guinea Corps*: the members of it collectively *Guineamen*: and, if taken separately, this or that one is familiarly spoken of as being *concerned and interested in the Guinea trade*.‖

Of the *degree of dependence* in which the situation places a man, no unapt token may be found, in the multitude of the persons whose desire of being placed in it is manifested within a given district, in a given length of time.

In 1808, number of persons, inhabitants of Middlesex, actually upon the qualified list, 1100.§ Number of those who in part of one year applied to be put upon that list, addressing their application to one of the sheriffs,

* These, with reference to the *special jury* in question, are called *tales-men*. But the persons to whom the denomination is on this occasion applied, are very differently circumstanced from those to whom it was originally applied; *viz.* in the case of the *original* body of jurors before the innovation gave rise to the distinction between *special* and *common* jurors: the *tales-men* of those days were men actually taken from the crowd of casual by-standers; as, when given at length, their Latin denomination, *tales de circumstantibus*, imports.

† Courts *three*: King's Bench, Exchequer, and Common Pleas: in each of the two former, grand electors or master packers, two: in the latter, three. See above, p. 76, *note* †

[In the orginal edition, the "Common Pleas" having been accidentally omitted, the number was made "*six*." See p. 77, *sub-note* *]

‡ Part II. Chap. 2 and 3.

‖ [*Guinea trade.*] Of this same *Guinea corps*, the existence is, by a learned correspondent of the late sheriff Sir Richard Phillips, *viz.* the gentleman whom we shall see presently dating from *Lincoln's Inn*, and in a letter destined for publicity, certified as matter of notoriety: and, though many a fact not true is spoken of as true, yet, that a fact neither notorious nor true should by a man of character be certified as notorious — by a man whose name, though not published, must have been signed — does not seem to be in the ordinary course of things.

Speaking (p. 175) of "persons who from low situations in life have crept into a little independence, and by artifice and collusion with the inferior officers, get their names placed upon the *freeholders' list* with the proper additions, ... I know several (says he) of this description who are ludicrously described as being *deeply concerned and interested in the Guinea trade*." .... Letter, dated from *Lincoln's Inn*, September 1808, to *Sheriff Sir Richard Phillips*, printed in his *Letter to the Livery of London on the duties of Sheriffs*: London, 1808, 2d edition, p. 175. See the Letter at length in Part II. Chap. 7, of this work.

§ Phillips, p. 160.

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under the erroneous notion of its being in his power to put them upon it, upwards of 100* —all spoken of by him by the description of "respectable persons"—not to speak of others.†

Two other sources require here to be brought to view, from which the completeness and abjectness of dependence, and the correspondent arbitrariness of the correlative power, are capable of receiving increase:—1. The *facility* and *security*, with which the correspondent power created by such dependence is capable of being exercised; 2. The *number of the persons*, by any one of whom the power in question is, with that same degree of facility, capable of being exercised over the one dependent in question. On both these accounts may be seen, in the instance of the Guinea corps, a degree of *dependence* — in that of their secret rulers a degree of *arbitrary power* — such as it may not be easy to match in any other instance.

Consider, in the first place, the number and quality of the persons, in whom the dependent will be apt to view the arbiters of his fate. *Visible* and *immediate* possessors of this power, two — and two only: these will be, in the first instance, the master packer by whom the *gross occasional list* is formed — and, in a crown case, the crown solicitor by whom the candidate for a place in the *serving list* is liable to be *discarded*.

But these are not, either of them, persons by whom, in case of any sinister interest, the *original* sinister interest will naturally be possessed: it is from other *persons behind the curtain* — persons in quality and number unknown to the continually-employment-seeking and everlastingly-dependent guinea-man, that, in case of any such sinister interest, and correspondent notification of *superior* will, those *ostensible* and *apparent* officers will have taken their direction or their cue. In these unknown occupants of the region situated behind the curtain, the trembling guinea-man will behold so many phantoms, to the *will* of every one of which, so far as it can be guessed at, and to him presents itself as reconcilable with that of the rest, it will be necessary for him to shape his part in the verdict. Among half-a-dozen of these high-seated spectres, to *five*, for example, the verdict he joins in may, in his conception, be matter of indifference. No matter: if to the remaining *sixth* it be matter of anxiety, the liberty of the guinea-man is as effectually killed by this single one, as it could have been by all six.

Meantime, neither with any of the phantoms behind the curtain, nor with either of the two masses of human flesh subsisting, is it possible for the *guinea-man* ever to come to any sort of explanation. With the right-hand man of the judge it is scarce possible, with the crown solicitor it is neither necessary nor natural, that he should ever have any sort of intercourse. His sin, the joining in a wrong verdict, is committed openly in the jury-box: his punishment — removal out of the *select qualified list* — will be inflicted in secret: yea, and so secret, as not to be at any determinate time made known even to the sinner himself. Offended powers inexorable, were it only because uncognoscible: repentance rendered utterly unavailing by the very nature of the case.‡

Think now of the *facility* and *security*, with which the correspondent *power*, created by this sort of dependence, may be, aye, and ever must be, exercised. Say rather, *profited by*, without being *exercised*. To powers that need never make their appearance, neither *action*, no, nor so much as *existence*, is necessary to the production of the most unreserved obedience: existence sufficient to the purpose is lent to them by the dependent's fears. On the part of the invisible potentate, no previous *mandamus*, no *lettres de jussion*, are ever necessary: the effect is produced without an atom of responsibility in any such high quarter, in any the slightest shape.

How delightful, yes, even in comparison of what it is at present, would be the situation of a Chancellor of the Exchequer, were the corps under *his* command subject to an equally efficient *mutiny law*, and thence in a state of equally perfect discipline. No need of *letters*, no, nor so much as of hints or winks, suggestive of the *moral duty of resignation*. No Whitbreads, no Madoxes, to encounter: no *votes of innocence* to frame after *confessions of guilt*: no previous questions to move, and carry by main force. The thorns that pierce the well-compacted bench he sits upon would

* Phillips, p. 173.

† [*Speak of others.*] To Sir Richard Phillips, a considerable time before the expiration of his shrievalty, "more than a hundred applications" had, as he himself assures us, p. 173, been received, soliciting to be put upon "what they called the special jury list." All these from persons termed by him "respectable persons:"—whether to these were added any other applications, *viz.* from persons to whom that denomination could not, in his judgment, be with propriety applied, is not mentioned.

‡ Thus, in a political libel cause, the persons in whom the trembling guinea-man will behold so many eventually avenging angels, each of them a flaming sword in hand, ready to drive him *out of his paradise*, are not only the *master on the crown side*, the *crown solicitor*, and the *judges* of the court, but, among persons *in high situations*, all those who have been either struck, or struck at, by the instrument thus *vulnerary* to sentimental *feelings*. For a knot of them, see the case of the *King against Cobbett*, as reported in Cobbett's Register, 2d June 1804,—the grand modern edition of the grand *star-chamber* case *de libellis famosis*, as hereinafter brought to view.

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not then be so pungent, but that it might be "*in the power even of money*," dross as it is (so there were but enough of it) to assuage the smart.

How perfect soever the discipline of this corps, I speak of the *guinea corps*, may be at present, its existence in any such degree of perfection cannot have been of any very ancient date. *Point d'argent, point de Suisse.* Before the situation was capable of being moulded into an instrument of corruption — an efficient cause of sure obsequiousness — it was necessary that a quantity of *saccharine* matter, sufficient for the *dulcification* of it, should have been secreted and combined with it. But, even at present, keen and numerous as we have seen the appetites to be that are excited by that matter, the quantity of it furnished in a year is no greater (I speak always of *Middlesex*) than that which is extracted from 200 causes.

At present, as already observed, the whole of the *gross occasional list* (48) being, on the occasion of each cause, chosen in the first instance by the *master packer*, all taken out of the *select and secret list*, with whose "connexions, &c." he is so perfectly well acquainted; — in this *regular* and *well-ordered* state of things, which of them are left to constitute the *reduced list* (24,) of whom the 12 whose names stand first upon the *appearing list* will constitute the *serving list*, will, to him and his high-seated superiors, be, as already observed, matter of complete indifference. But at an early period of the special jury system, no such entire security could have been possessed. Of those with whose *dispositions* he was sufficiently acquainted, they being at the same time such on whom, *if* attending and serving, dependence might be placed, there might not be above a dozen of whose *attendance* he could be sure; and of the whole of this dozen, supposing the right of discarding exercised, he might find himself deprived. In such a state of things, the command of a verdict, even from special jurymen, seems to have been matter of anxiety: and though, when once established, the faculty of *discarding* could not, as it was thought, consistently with prudence, be absolutely taken away, yet what in this way was thought capable of being done, without a too complete removal of the mask, a too barefaced act of injustice, was done.

Accordingly, in the 3d of King William, anno 1690, Holt being Lord Chief-Justice of the *King's Bench*, "a standing *regulation*," if not at that time made, was at any rate found to be in existence:* a regulation whereby it was provided, that unless a *special order* were made for the purpose, giving to the parties on both sides, and consequently to the defendant, that faculty, it should *not* be exercised; but the nomination should be *completed* as well as *begun*, by the officer of the court, the *subordinate* of the then *removeable* and completely *dependent* judge.†

Thus the *ordinary* course of practice at that time was — *not* to allow any such faculty; and it was only where, having been importuned for, it could not for shame be refused, that it was granted.

Throughout the system of *technical practice*, so universal is the *practice* of *misrepresentation* and *deceit*, that it is matter of continual uncertainty by what hand this or that branch of business is actually performed. Thus, in equity practice, of the mass of business stated in the books as being performed by the *master*, an indefinite and ever variable proportion is really performed by some clerk of his, the master knowing nothing of the matter. In any of these offices, intimate on any occasion a suspicion of anything not exactly correct, whether in the article of *probity*, *attention*, or *capacity*, your mouth is stopped at once by a reference to the dignity and character of the learned person, whose office is held nominally during good behaviour, virtually for life, and who, attired in such resplendent robes, takes, in the Court of Chancery, in Westminster-hall, his periodical seat by the side of the Lord High Chancellor himself; whereas in truth, on the occasion in question, the business was performed, the *power* exercised, a *power* over the property of suitors to any amount in point of importance, exercised — not by this learned person, but by some underling who is known to nobody, whose name appears nowhere, and who being *there* to day, may be gone to-morrow.

Thus in the case of the jury-packing business. In every of the five packing offices but one, the person by whom the business is done is, in the several books of practice above referred to, gravely stated as being *the master*: and, in each of those four instances, so it may be or may not be. But in *one* of them, viz. in the *King's Bench office, crown side*, of the practice of which there was no account till so late as in the year 1805, the public happened to be favoured with one by Mr. Hands, the packing business, it appears (p. 10) is per-

* Salkeld.

† To facilitate conception, the word *regulation* has hitherto been employed, as above: the effect not being readily conceived, unless a tangible cause, adequate to the production of it, be conceived along with it. But the plain truth is, there was *no regulation* in the case: in the existing collections, at least, nothing of this sort is to be found. Here, as elsewhere, there was nothing in the case but what, in *law language*, is called *practice*: that is, a series of *arbitrary acts*, from which every man is left to frame his own conception of *a law*, *viz.* such a law as, *had* it had existence, would, in his conception, have formed a sufficient warrant for those acts, but which, in reality, had *no* existence.

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formed, as it may happen, sometimes by the *master* sometimes by *his clerk*.

This being the case in a *crown* cause, a *libel cause*, for example, whosoever it may happen to, to see reason for wishing to make himself master of that useful article of knowledge, which, in the Exchequer, according to Mr. Edmunds, as above, persons concerned are so regularly solicitous to acquire, *viz.* information concerning the "*connexions, &c.*" of persons qualified for being special jurors, has his choice of two of these intelligence-offices, one of them *inferior in dignity*, and thence, perhaps, *superior in obsequiousness and tractability*, to what is likely to be commonly known or imagined.

For, according to Mr. Hands (p. 10,) after "the solicitor has got the *master's* appointment on the rule to name the jury," . . . . it is "the *master's clerk*" that "extracts, out of the sheriff's book of jurors, the names and additions of forty-eight;" and afterwards, "if either party does not attend the *master's* appointment," it is "the *master or his clerk*" that "strikes out for the absent party."

§ 5. *Aggregate Mischief of the System.*

Of the *mischief* capable of resulting to the country from the application of this engine of sinister influence, the quantity will, of course, depend on the *extent* of which the application of the instrument is susceptible.

Cases of felony excepted, this extent coincides with that of jury trial: at least with that of jury trial in causes originating in any of the great Westminster-hall courts. On every occasion, it rests with either party to have a special jury for asking for.* What is reserved to the court is only to say, and that at a subsequent stage, by which of the parties the *extra expense* shall be borne. Among the causes in which the king is nominally the plaintiff — in those to which the name of *crown causes* is more commonly understood as being confined — I mean those in which the servants of the crown, as such, being substantially prosecutors, having the prosecution under their care — the expense being borne out of the taxes, all causes, it may well be imagined, become *special jury* causes: and among these are King's Bench *libel law* causes, and, in comparison of these (of which presently) all other *crown causes* will, to the purpose here in question, be seen to be of light importance.

And here, then, we have not only the possible and probable, but actual extent of sinister influence.

Of the sinister influence of which the institution of special juries is thus the engine, the *local sphere* is indeed confined, perhaps at least in a great degree, within the bounds of *London* and *Middlesex*. But, by causes not necessary to be here particularized, within this sphere are brought, with scarce an exception, all causes that belong to this most important class.

But *this* mischief, though *the principal*, forms but *one* ingredient, in a compound mass of mischief, in which, at least, *four* distinguishable component elements may be reckoned up: —

1. First comes the injustice — the base and sordid injustice — out of the common pockets of rich and poor, an allowance given *by* the rich *to* the rich, in compensation for a burthen which, to those to whom the compensation is *given*, is as nothing, but, to those to whom compensation is *refused*, a serious one.†

* Phillips, p. 153; 3 Geo. II. ch. 25. sec. 15.

† In 1778, so considerable was the pressure of that vexation and expense, that, for a long course of years, a species of traffic, that had been invented by one of the bailiffs to the sheriff of Middlesex, *viz.* the *sale* of a species of *indulgences*, exempting men from that burthen, had composed a regular branch of his revenue. Having been proceeded against in the way of *attachment*, as for a contempt of the authority of the court, and self-convicted by answers to interrogatories, he was sentenced to pay a fine of £200, and committed to prison, there to remain till the fine was paid. King *versus* Whitaker, B. R. 12th February 1778. Cowper's Reports, p. 752. Such was the pressure in the *small* county of *Middlesex*: what must it have been, and still be in the *large* ones?

When the class or rank in society, to which a man belongs, is to a certain degree inferior, his interest has either no claim to any degree of consideration, or, if to any, to none but a proportionably inferior degree of consideration: when his rank in society rises to a certain level, his claim to have his interest taken, to this or that effect, for an object of consideration, rises along with it. Such is the maxim which, from the earliest times down to the present inclusive, has, though seldom very explicitly avowed, been not the less steadily and extensively acted upon and approved.

A collection of the instances, in which this maxim has received its application, would be no uninteresting article; no unfit object, one of these days, for the industry of *a committee*. In the statute book they might be found in deplorable abundance. The present instance may serve for one. Of the *extra aptitude* looked out for, as above, the only *criterion* employed was *extra opulence*. To leave without compensation for this burthen that great mass of qualified persons, who, in comparison, were least able to bear it, was no injustice: to leave without compensation men selected for their extra opulence, distinguished by no other mark than that opulence, and thence by their superior ability to bear the burthen, *would* have been an intolerable injustice. To *common* jurymen, accordingly, the compensation has never been given: it has been confined to *special* jurors.

Whatsoever may have been the *cause* (for it remains involved in darkness) such had been the liberality which on these occasions had come to exercise itself, that, in the declared opinion of

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2. Then comes the *pension* fund — thus secretly formed, and, though not altogether without the *formal allowance*, yet, as to its nature and application, completely without the *actual cognizance* of parliament.

3. In the third place comes the application of this fund to a purpose undeniably *hostile*, and in its *tendency* — and, if not remedied, in its sure ultimate effect — destructive to the constitution; destroying altogether, to the extent of its influence (and under its influence are included, we see, the most important causes,) the *check* which the power of the jury *was designed*, and *is supposed*, to apply to the arbitrary power of the judge.

4. Lastly — though, after mention of the preceding abuse, the mention of this last is but an anti-climax, comes the facility which, by the permanence already become notorious, is afforded to the *casual corruptor*: to any individual to whose improbity it may occur to take advantage of the facility thus afforded.

To extinguish this facility was the declared and principal object of the first of the series of statutes above mentioned; declared in two places (3 Geo. II. c. 25, § 1, § 4.) *Corruption of jurors* is, in the *first* of the two places, spoken of as the notorious *effect*: *permanence*, the continuance of the same man in that situation, is in the *last* of the two places spoken of as the *cause*.*

§ 6. *Views of the Lawyers who penned the Acts.*

The confirmation given by the series of statutes, all of them statutes of the last reign, to the use made of special juries, this confirmation, and the prodigious extent to which the practice has in consequence been spread, have been already mentioned.

Of the lawyers with whom this series of statutes originated, or through whose hands it passed, the treacherousness, though in this, any more than in any other instance, treacherousness of this sort ought not to excite surprise, has not the less claim to notice.

The everlastingly vaunted use, and, if not the sole, at least by far the principal use of juries, was the serving as a check to arbitrary power, that otherwise would have been in the hands of judges. But, the mode of appointment considered, in proportion to the extent to which it prevailed, by the substitution of this new-invented to the original species of jury, the efficiency of this check

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parliament, it was become necessary to set limits to it: — "Whereas great complaints," says the statute (24 Geo. II. c. 18, § 2) "are frequently made of the great and extravagant fees paid to jurymen returned under the authority of the said recited acts." Limits were accordingly set to it by the designation of a fixed sum, viz. *a guinea*, which it should not be lawful to exceed.

So long ago as the year 1623, 8*d*. per cause, the same in town and country, was the fee (as we have seen) that used to be given to each jurymen, before the distinction between *special* and *common* had come into existence. How long the fee had stood at that amount, at that time, does not appear. At that amount it stands at this day in the case of common jurors. Gentlemen and squires found gentlemen and squires to take care of them, as well as judges (See Part III. ch. 3) to sympathize with them. Farmers, shopkeepers, and master handicrafts, found no such friends.

* Let not any such misconception take place, as that it is among the designs of these pages to present, in any unfavourable point of view, if individually taken, the characters of such persons to whose names it happens to have a place in the numerous list in question: I mean the aggregate list of persons, to the number of about 400, set down in the books as *qualified* to serve as special jurymen in the county of *Middlesex*.— Among them the only persons, to whom so much as the shadow of suspicion can attach, are those, if any such there be, whose names have been placed upon the *select qualified list*: and of these the names are necessarily *a secret* — and that not only to the *public at large*, but, in many instances, perhaps to *themselves*.

Thus much, however, seems scarcely to be open to dispute; *viz.* that this same *select and secret qualified list* is a sort of sink, a county sink, a common sewer, into which whatsoever human matter, if any such there be, "is rotten in the state of Middlesex" — whatsoever human matter, endowed with the requisite pecuniary qualification, is, in the scantiest degree, provided with any such qualifications as those of *probity* and *capacity*, has a natural tendency to gravitate. Far be it from me to *assert* — for sure I am, it does not happen to myself to *know*, that in that whole list so much as a single person deficient in either of those respects would be to be found: all I mean to say is, that if any such person or persons *do* exist — if, in the whole qualified list, any such peccant matter have existence, the *select* and *secret* list, if any such there be, cannot but, of all places, be the properest place to look for it. For in the character of an adequate substitute to all other requisites, stands this one, viz. *obsequiousness*: obsequiousness, *experienced* or *presumable*. But to make proof either of *this*, or of any other qualification, to no one of them, unless it be the *foreman*, can it ever be necessary, so much as to open his lips: no, nor to give any sign of life, other than an assenting nod. Neither by *improbity* in any shape, so long as it be not to a certain degree notorious, nor by *incapacity*, so long as no *commission* of lunacy has as yet been issued, can any *bar* be opposed to *admission* upon this list: no, nor so much as to the *blameless* discharge of the functions of the office. And hence it is, that the office, such as it is, has become to the degree that has been seen (p. 79. note ||) even though it be not a sinecure, a natural object of intrigue; nor that above the reach of characters, in every respect, so their worthlessness be not notorious, the most worthless. What more promising instrument can power wish for when placed in weak or wicked hands? To the case of country causes, so much of the mischief of this institution as is confined to the anti-constitutional abuse has comparatively but little application. The great theatre in the metropolis enjoys almost a monopoly of the political libel law causes.

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was, in the first instance, greatly debilitated, and left exposed to be at any time utterly destroyed. For the healing of the wound thus given to the constitution, nothing whatever was done by these unfaithful trustees and unworthy representatives of the people.

In the hands of the dependent subordinate of the judge, to whose power the function of those his assessors was in pretence designed to operate as a check, these pretended reformers found the nomination of those same assessors:—in those hands they found it, and in those same hands they left it.

By such practised eyes, the *fraud* was by far too palpable to have passed unnoticed. As to the *remedy*, nothing could have been more obvious. In a selection made by human judgment, under the influence of human selfishness and improbity, there was in any hands more or less danger: in a selection made, in the first instance, by *chance*, corrected afterwards by human judgment, under the influence of *impartiality*, a neutral power, formed by the combination of opposite partialities, there could be no such danger. The expedient was too much in use, and too obvious, to escape notice. Use will be made of it further on, in the composition of the proposed remedy.

The extent they found it occupying (I mean the *special jury* system) was not only bounded, but extremely narrow. They rendered it boundless: and, by this new-fangled and corruptly-constituted tribunal, all causes that are considered as coming under the denomination of *important* ones, have accordingly been swallowed up.

To the party in the wrong, to the *malâ fide* suitor, as often as he sees his advantage in substituting, they gave the power, the indefeasible power, of substituting this unconstitutional tribunal to the old constitutional one; and, amongst others, to the servants of the crown, and to the judges themselves, as often as it should happen to them to have any malevolent passion to gratify, or any sinister interest to promote, at the expense of justice.

Giving to their new tribunal a character so different from that of the old one, which it has to so great a degree elbowed out—giving to a board, secretly composed of commissioners, paid, placed, and displaceable by the servants of the crown the respected and almost sacred name of *jury*, they thus contrived to transfer to the counterfeit institution, all that attachment and confidence, so justly possessed by the genuine one which it supplants.

Finally, nor, in the *extent*, as well as *confirmation*, given to this abuse, did they forget, that which Judge and Co. never have forgotten, profit to their own *firm*.*

CHAPTER V.

JURY UNANIMITY INCREASES THE CORRUPTION.

§ 1. *The effect of Corruption, how secured by it.*

Of the efficacy of the system of corruption, of which the institution of a special jury is the instrument, our conception would be very in-

* The following particulars are taken from Edmunds' Solicitor's Guide to the office of Pleas in the Court of Exchequer, p. 119, as containing a fuller account than I have found in any book delineative of the practice of any of the other courts. In these particulars, the difference between court and court, if any, cannot be considerable.

1. To "*the master*," (meaning the *master packer*) for packing, £2 : 2s.

N. B. The "*master*," is the *deputy-clerk of the pleas*, called *master* in current language. The *deputy*: for, on this side of the court the principal, the clerk of the pleas has no more to do with this or any other part of the business, than the other principal master packer, the *remembrancer*, has on the other.

From this and other sources, anno 1797, the principal clerk of the pleas (appointed by the Chancellor of the Exchequer to prevent justice from being sold in that office too cheap) pocketed £318 : 12s : 6 a-year for doing nothing: his deputy (appointed by the principal) £318 a-year, for doing what was done; 27th Finance Report, anno 1798. To a *barrister* for *pretending* to have moved for a special jury, 10s. 6d.

N. B. Moved, *i. e.* applied to the court for a rule, ordering that there shall be a special jury, and by the act of signing his name expressing the assurance of his having made such application: whereas, in truth, except the signing of this false certificate, nothing has been done by him, the rule being made out by an officer, fee of course received for it, under the judicatory, without the cognizance of the judicatory, or any one of its members. (See Scotch Reform, Letter I. Devices.) For their parts, in this operation of obtaining money on false pretences, the *clerk in court*, and the *solicitor*, between them, (the judge, where needful, lending of course his power) *extract* (*extort* would not be the proper word, *extortion* being a punishable crime) 4s. 10d.; whereof 2s. 8d. to the clerk in court, 2s. 2d. to the solicitor.

The form in which their part of the system of false pretences is expressed, is in these words:—"*Drawing a brief, and making a fair copy thereof to move for a special jury*," so much:—"*Paid a fee to counsel to move same*," (true) so much: "*And attending him*," (true) "*and the court*" (not true) "*for that purpose*," so much.

Paid (says one item) *to the under-sheriff's agent, attending with freeholders' book*, £2 : 2s.—Two guineas to a man for pretending to hold a book—a book consisting of 400 lines, each containing a man's name and abode! Instead of plunder, suppose justice to have been the object, what would have been the course? A paper with the names on it kept hanging up in the office: on any change made in the list, notice of the change, or else a fresh paper, sent by the post. Two guineas per cause, multiplied by 200, the number of special jury causes in a year in this county, (Phillips, p. 159), makes, on this score alone,

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adequate, if the force given to that engine by the obligation of what, in the case of a jury, is called *unanimity*, were not taken into the account. *But* for this feature, for any purpose of corruption, a *majority*, or, at least, half of the twelve, all corrupted, would have been necessary: under and *by virtue* of this feature, one, any one, gained and properly armed — armed with the necessary degree of *patience*, suffices.

If the *mode of forming verdicts* had been the work of calm *reflection*, working by the light of *experience*, in a comparatively *mature* and *enlightened age*, some number, certain of affording a *majority* on one side, viz. an *odd* number, would, on this as on other occasions, have been provided; and to the decision of that preponderating number would of course have been given the effect of the conjunct decision of the whole: witness the course taken for securing a decision under the Grenville *Act*.

But the age in which the mode of forming verdicts was settled, being an age of *remote antiquity*, of such high antiquity, that nothing more is known of it, except that it was an age of *gross and cruel barbarism*, the course taken for the adjustment of that operation was different, and, compared with anything that was ever exhibited in any other nation, no less extraordinary than it was barbarous. The whole body of these assessors, *twelve* in number, being *confined* together in a certain situation, and in that situation subjected to a mode of treatment, under which, unless in time relieved from it, they would, at the end of a more or less protracted course of *torture*, be sure to perish: subjected to this torture, but in the case of this as of other torture, with power to *relieve* themselves from it: in the present instance by declaring, each of them, the fact of his entertaining a certain *persuasion* (the persuasion expressed by their common *verdict*,) whether *really* entertained by him or *not*: in this way it was that a joint decision, called a *verdict*, expressed by a predetermined word or form of words, was on each and every occasion extorted from the whole twelve. Such, for the declared purpose of securing *truth*, *veracity*, *verè dicta* — for making sure that, on the sort of occasion in question, whatever declarations of opinion came to be made should be true — such was the expedient invented in the 13th or 14th century — such the course which *still* in the *nineteenth* continues to be pursued.

Here, then, as often as in the number of *twelve* jurors, any difference of opinion has had place, so often has an act of wilful falsehood, of mendacity, had place: viz. in the instance of some number, from one to eleven, included in the twelve, if not (as in the case of sinister influence may at any time happen) in the instance of all twelve. For that it is in the nature or power of torture — one and the same torture — as being applied at the same time and place to twelve persons, A, B, C, D, and so forth, to produce a real change of opinion in any one of them — or if it were, to render it more likely, that the opinion of A should change into that of B, than that of B into that of A, and so forth — is a proposition which, upon reflection, will not, it is supposed, easily find any person either to sign or so much as seriously to say it: excepting always the case of his being placed under the action of any of those machines for the production of *peace*, *concord*, *unanimity*, or *uniformity*, under the pressure of which anything whatsoever — any one thing as well as any other, is either said or signed.

But though what *never* can happen is, that by a quantity of bodily pain or uneasiness, any real change should be produced in the opinion formed by any human being on a subject that has no natural connexion with that pain or uneasiness, yet what may very *easily*, and will *naturally* happen is, that either by the eventual assurance of any given quantity of pleasure, or, what comes to the same thing, by the assurance of having at command a given quantity of the instruments of pleasure in any shape — or by the eventual apprehension of any given quantity of pain or uneasiness — a disposition may, in a bosom soothed with that assurance, or galled by that apprehension, be produced — a *disposition* — yes, and moreover, an effective *determination* — to submit to that pain, for a greater length of time than any during which the same pain will be submitted to by a bosom not acted upon in either way as above.

From this state of things follow two practical results: —

1. Suppose *no* sinister influence (viz. of will over will) to have place, the verdict will always be conformable to the opinion declared by that one of the jurors, in whose bosom the prospect of the uneasiness to which, until the formation of the verdict, they will all be subjected, operates with *least* force — more shortly, by him whose *sensibility* to the torture is *least* acute — whose power of *endurance* is *greatest*.

2. Suppose any sinister influence to have

£420 a-year, pocketed by the under-sheriff for doing nothing.

To Judge and Co. (the attorney part of the partnership included) total profit made up in this way appears, upon casting up, to be £7:8:8. But this is the *minimum* rate, exclusive of casualties: and, in a *country* cause, the profit of the *country* attorney is *not* included in it: this over and above the *other* expenses, which equally have place whether the jury be a special or common one: and to this account remains to be added as expense to the *individual suitor* in a cause between A. and B., to the *public*, in a political *libel* cause, the *twelve guineas* given, at a guinea a-piece, to the special jurors.

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place — an influence acting on the bosoms of any one or more of them in the same direction — while no sinister influence has place in the bosoms of any of the rest; — there are two cases, in each of which the efficiency of the sinister influence, and the delivery of a corresponding verdict, will take place of course: — viz. if on both sides the power of endurance (with reference to the torture) be *equal;* or if in the bosom operated on by the sinister influence in question (say the fear of losing the situation at the guinea board,) the force of the fear produced by the sinister influence be anything more than equal to the quantity by which what *would otherwise be* the power of endurance on *that* side falls short of the *actual* power of endurance on the other.

§ 2. *Corruptors, regular or casual — both served by Unanimity.*

Two sorts of corruptors have above been indicated and distinguished: the *regular* corruptor, Judge and Co.: the *casual* corruptor, any *individual*, to whom it may occur to take advantage of the facilities, afforded by the institution of the guinea corps, for securing a verdict favourable to his cause.

In whatsoever *shape*, and from whatsoever *quarter*, the matter of corruption be proposed to be administered, for securing the effect of it, no other contrivance so effectual as this of *unanimity* — forced and mendacious unanimity — could possibly have been devised.

On so simple and easy a condition, as the being prepared to endure, longer than any of his fellows, a degree of bodily inconvenience which no persons so circumstanced were ever known to endure long, it gives to any *one* of these jurors, that chooses thus to purchase it, the power of *all twelve*.

Two different sorts of causes, each with its appropriate judicatory, may serve as examples of the assistance derivable by the two different species of corruptors from this one common source.

I. A *political libel* cause — *sole* judicatory *the King's Bench* — is in a peculiar degree *adapted* to afford exercise, or rather does *of course* and *of itself* afford exercise, to the sure and safe and silent and imperceptible operation of the *regular corruptor*, or rather corps of corruptors, whose *head-quarters* are at the *crown office* belonging to that honourable court.

2. A *smuggling* cause, — *ordinary*, and among the courts of technical procedure in practice, *almost sole* judicatory, the Exchequer — is, under the invitation held out by the permanent establishment of the *guinea* corps, in a peculiar degree adapted to the finding exercise for the dexterity of the *casual corruptor*.

His *solicitor* (for, when the disposition to corrupt and be corrupted is banished from the Treasury Bench, it will be time enough for a *smuggler* to despair of meeting with it upon the *roll of attorneys*,) *his solicitor* (the same sort of gentleman who, a few years ago, would have answered to the name of *attorney*) pursuing the instructions given to him as above by Mr. Solicitor Edmunds (p. 119,) "*attends*" at one of the *five packing offices* above mentioned, addresses himself according to circumstances, either to the acting *master packer* himself, or to the clerk, who to this purpose officiates occasionally as the master packer's deputy — and, according to instruction, as above, makes his "inquiries into the connexions, &c. of the jurors." . . . . .

Alas! what a round-about course is this I was about attempting to delineate! as if a solicitor in the smuggling line did not know his *duty*.

The duty of an *advocate* is to take fees, and in return for those fees to display to the utmost advantage whatsoever falsehoods the *solicitor* has put into his brief: the duty of the *solicitor* is to put into such his brief, whatsoever falsehoods promise to be so made use of to the best advantage. It is for this amongst other purposes, *viz.* for giving scope and effect to such falsehoods, that, by a *law* of the *modern Medes and Persians*, suitors stand for ever excluded from the presence of the judge.

In the great system of delinquency, the smugglers' branch, as it has its *principals*, *viz.* the smugglers *themselves* who are called by that name, so has it amongst its *accessaries* — its licenced accessaries after the fact — the learned *aiders*, *abettors*, *receivers*, and *comforters*, of the aforesaid smugglers.

In virtue of that *division of labour*, which, by the fortuitous concourse of talents, disposition, and opportunities, has been produced in the court of Exchequer, besides advocates of the inferior order, there is always a title-gownsman or two, regularly established, as anybody may see, in the *smuggling* line.

Can it be otherwise among solicitors?

In the case of any or each such solicitor, let us then make that supposition, the contrary of which would be alike invidious and unnatural: let us suppose him to know, and knowing, to fulfil, in this behalf, his *duty:* his *duty towards man:* and, of his duty towards man, that more specially imperative branch, which is composed of his *duty towards the smuggler*.

In speaking of the *master packer*, and his lists, a list mentioned — as one that he *ought* to have, and having, to keep hung up, is (speaking of *special jurors*) the *gross qualified list;* — as a list which it is natural he should have, but not natural that he should keep hung up, another, under the name of the *select and secret qualified list*, or, to give it its other denomination, the *guinea corps*.

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The solicitor in the smuggling line, can he be said to fulfil his duty as towards each or any of his clients, if he has not, either in his bureau or in his head, a list of the several members of this corps — as *correct* and *complete* as it is in the power of "*inquiry*" and industry to make it?

If in the whole flock of guinea-men there be but a single scabby sheep to be found, that one individual sheep is *his man*: — under the *unanimity* system, that one individual secures the verdict.

As to the *arguments* by which he, whose *duty* it is to *offer* the bribe, satisfies the conscience of the habitually obsequious guinea-man of its being his duty to accept it, any attempt to display them in detail would be alike superfluous and irrelevant. *Necessity of smuggling — impossibility of carrying on trade without it—informers, perjurers—never believe one of them — prosecution is persecution.* . . . . .

"Is it for any such purpose as that of *biassing a gentleman's judgment*, that the little compliment — the small retribution for his trouble — is ready to be presented?" "Good heavens! no! — it is only to engage his attention — his strict and unbiassed attention — of which his detection of the system of perjury, which it is *known* will be brought forward, will be the certain consequence." . . .

But to what purpose go on incumbering the section any further with any the slightest hints? Our solicitor has heard with due attention the speeches delivered from *learned silk*: he has read *debates* in newspapers: — poorly qualified indeed must he be for the exercise of this part of his duty, if on the occasion of any such diplomacy he ever finds himself at a loss. Come the worst to the worst, he can but go up to the guinea-man, with his piece of paper in his hand, and in a tone of blunt frankness speak out and say — "Look here, Sir! look at this five hundred pound: this very note shall be yours, the very day a verdict of not guilty is pronounced.— Good Sir! you need not stare so: it is but corruption, make the worst of it: and it's all for the good of trade. In short, Sir, without corruption, no government can be carried on— it's a known fact, agreed to on both sides of the house—and if government can't, I should be glad to know, Sir, how can trade?"

"Well, Sir, we won't differ about names: if *corruption* is not to your taste, let us say *influence*: — and pray, Sir, where's the difference?"

But, in one and the same cause, suppose the *regular* corruptor on *one* side, and the *casual* corruptor on the other: — in a case of this sort, how will the matter be settled?

Fret not thyself about any such case: it is a case that can never happen: nor, if it were to happen, would there be any difficulty in it.

In the *libel line* it can never happen: for, as *every man* that either *writes* or *reads* is by law a *libeller*, there is no such person as a *solicitor* specially established in the *libel* line. The regular corruptor — or rather the phantom of the regular corruptor — for (as we have seen) the phantom is quite sufficient — this regular phantom, having here no competitor, walks over the course.

In the *smuggling line*, it can almost as little happen. The *solicitor* for the smuggler is *solicitous* for the smuggler, *because*, and *in so far as*, in being solicitous for his *client*, he is solicitous for *himself*. Here, then, we have the *casual* corruptor. The solicitor for the *crown* is *not solicitous* for what is called the *crown*: his solicitude, if he has any, is more likely to be for the smuggler: because the more of them escape a first time, the more there are that remain to be prosecuted a second time; and whether the smuggler be caught or escape, the solicitor remains solicitor as before.

Here, then, provided the fee be *handsome* enough (for *proportions*, it will be seen, must not be forgotten) — here it is the *casual* corruptor that walks over the course: as to the regular corruptor, everywhere but a *phantom*, he is *here* a phantom by much too weak to oppose to flesh and blood any effectual resistance. In the *Exchequer*, he is but a *pigmy*: it is in the *King's Bench* only, and there in the field of *libel law* only, that he *is*, as he will presently be seen to be, a *giant*.

But *suppose*, be it possible or no, a *real* competition: a solicitous *casual* corruptor on one side, a solicitous *regular* corruptor on the other: how (it may be asked) would matters be settled in this case?

In the *guinea* trade, as in any *other* trade, they would be settled *upon the principles of trade*. Compliment offered, so much down. *Per contrà*, on *taking stock*, situation in the guinea trade, gross value, so much: situation not being insurable, either at the *Equitable* or the *Amicable*, say loss of value, by peril of false brethren, and shipwreck, in case of *non-obsequiousness*, so much: balance, *for* or *against* accepting compliment, so much.

"But at this rate," says somebody, "we should have *bought acquittals*, especially in *smuggling causes*, as plenty as *sham pleas* or *sham bail* — and of any such degree of frequency, or anything approaching to it, are any indications to be found?"

Have patience: — things must have time to ripen. It is only within these *few* years, and under the *auspices* of the *present* learned chief, that the system has been raised to that height in the scale of perfection, at which it will presently be seen to stand. Earth must have *time* to bring forth her increase: especially in such a field as that of *judicature*, where if, of those things which yield profit

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to the husbandman, the growth of every thing is sure, yet even of those things the growth of almost everything is slow.

True it is, that, after fighting off till *judgment*, the *swindler*, with another man's money in his pocket, goes to *eight* of the *twelve judges* in the *Exchequer chamber*, or to *four* of them in the *King's Bench*, as the case may be, and says to them (they *appearing* in the only mode of *appearance* which they admit of, viz. by this or that *agent* of theirs) — "The delay you have upon sale is cut out, I find, in pieces much of a length; let me have one of the longest: make out your account: I know you deal for nothing but ready money; here it is for you." Here we see *perfection* — the very summit of the scale.

Expect not, however, that at the guinea office, even at that which is under the Exchequer, business of this sort should, at so early a period of the institution, be already to be transacted upon any such pleasant and easy terms, as with the old established *firm*, Judge and Co., the business of which has for so many hundred years been conducted upon the *true* principles of trade.

Expect not therefore to find *already* established, by the side of each *delay-shop*, a *verdict shop*, at which, addressing himself to a clerk of the *guinea board*, with as much frankness as if in an error-office it were a solicitor to a swindler addressing himself to the *clerk of the errors*, a solicitor in the smuggling line may say — "The king against such an one — I am for the defendant: secure me a verdict! penalty, so much: 5 per cent. upon that sum, so much; here it is for you."

No: — to the prosperity of this branch of the trade, one limit there is, which is set by the very nature of the trade.

The *regular* corruptors are here the *fair traders: casual*, such as smugglers, are but *interlopers:* between the fair trader and the interloper there exists an everlasting jealousy. This being the case, suppose this branch of trade arrived even at its highest possible pitch of improvement — no one guinea-man could expect to sell any more verdicts than one. His comrade would peach of course: he would of course be let drop out of the list, and there would be an end of him. Therefore, unless the case be such that the price offered for the verdict is more than a place at the board is worth, the guinea-man is no less incorruptible than Cæsar's wife was chaste.

Expect not everything at once. Arm yourself with patience. A few pages more, and — though you will not find the curtain that screens the *verdict-office* so completely *drawn up*, as that which *once* screened the *delay-offices* has now been for these *eleven* years — yet, should your patience serve you till Part II. chap. 3, a slight *peep* behind *this curtain* you shall have.

CHAPTER VI.

PURPOSES TO WHICH INFLUENCE ON JURIES MAY BE MADE SUBSERVIENT.

§ 1. *Blind Confidence in Judges not warrantable.*

If, for confining the exercise of it within the paths of justice, the power of the judge stood not in need of any kind of check, the destruction of the sort of check which was designed, and is supposed to be applied to it by the functions of the jury, would not afford any just cause of complaint, any demand for reformation.

If, in the situation of judge, a man were not liable to stand exposed to the action of any sinister interest, or delusive passion, opposite to the interest of the public, in respect of the *ends of justice*, viz. neither on *his own* individual account, nor on account of any *other* individuals or classes of men, whose interests or passions, by whatsoever tie connected with his own, it may happen to him to espouse — were such the real state of things, on that supposition, the exercise — the independent and well-considered exercise — of the functions of the jury would not, in the character of a check to the power of the judge, be of any use; nor, therefore, would any diminution of that independence present any just cause of complaint, any demand for reformation.

Not that, even on this supposition, the propriety of continuing the use of juries, whose obsequiousness were thus regarded as *certain*, would, in this or in any other part of the field of jury trial, be the practical inference. No: the practical inference would be — that, in this part at least, of that field, juries ought to be *abolished*.

For sure it is, that if so cumbrous and expensive an appendage as is the jury-box to the official *bench* were not *useful*, it would be much *worse than useless*. To the course of judicature, in the character of a source of factitious complication, and thence of factitious delay, vexation, and expense, it is, *as it is*, an enormous — *as at best it would be* — a considerable incumbrance: while to such individuals as are loaded with the duty of filling it without recompense, the vexation is such as to constitute, as we have seen,* no inconsiderable part of the aggregate mass of public burthens.†

* Suprà, Chap. IV. § 5.

† [*Public burthens.*] It was in these sentiments that, in another work (*Scotch Reform*, Letter IV.) on an occasion on which a show had been made of a disposition to improve, partly by imports from *England*, so far as concerned the *civil* (*i. e.* non-penal) branch of law, the system of judicature in *Scotland*, considerations were brought to view, tending to show, that, in the way of *ap-*

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In saying *abolished — juries ought to be abolished* — I mean, of course, abolished by proper authority — abolished by parliament: — not reduced to collections of puppets by the machinations of judges.

But of the several propositions, thus brought to view, for the purpose of the argument, the contraries will, it is supposed, be found true.

Throughout the whole field of special jury trial, for confining the power of the judge — (meaning the exercise of it) within the paths of justice, there exists much need of a check, and that an efficient one.

For, in the situation of judge, throughout the whole of that field (whatsoever is situated without that field belongs not to the present purpose), a man is continually exposed to the action of sinister interest, and delusive passion, acting in directions opposite to the interest of the public, in respect of *the ends of justice:* to sinister interest and passion, casually on his own individual account, much more frequently on account of other individuals or classes of men, whose interests or passions, by whatsoever tie connected with his own, it may happen to him to espouse.

Throughout the whole field of special jury trial, obsequiousness on the part of juries — *obsequiousness* (secured, as above, by corrupt influence) is therefore, if the above propositions be true, prejudicial, in a high degree, to the interest of the public in respect of the *ends of justice.* I say *obsequiousness* thus secured: and if so, then so therefore are its above-mentioned efficient causes — viz. *packing* and *permanence.*

§ 2. *Interests, to the action of which Judges are liable to be exposed.*

Money, power, ease, and *vengeance,* these, together with *reputation,* so far at least as the efficient cause of felicity in this shape may have the effect of serving as a security or means of increase for it in any of those others — reputation, how well or how ill soever deserved, may be set down as indicative of the several interests by which, when acting in the direction of *sinister interests,* the conduct of public functionaries in general, and of judges in particular, is, in a more particular degree, liable to be warped.

Partiality — viz. in favour of the interests of this or that other individual or class of men — will be apt to present itself as another interest — and certainly not an inefficient interest — distinct from the above. Such as it is, the indication of it may, however, in a certain sense, be comprised in the above list: since by that one word are indicated the several sorts of interests already spoken of as comprehended in that list; the only difference being in the *personality* of the individual or individuals, whose interest is considered as being at stake. The pecuniary or money interest, to the action of which, in the character of a sinister interest, I stand exposed, may have for its exterior cause a sum of money which *I myself* am in a way to gain or lose, or a sum of money which *another person,* whose interests I espouse, may be in a way to gain or lose: and so in regard to *power, ease, vengeance,* and *reputation,* as above.

Of these objects of desire, *money* and *power,* especially if considered with reference to no other person than the functionary himself, present, on the present occasion, comparatively speaking, but little matter for attention. To the judge himself, *money* and *power* are secured by office: *secured* and *fixed,* out of the reach of receiving augmentation, any more than diminution, at the hands of juries: so far as *power* is concerned, those cases excepted, if any such there happen to be (for they are but of casual occurrence,) in which, the affections of the judge, taking an interest (in the way of *partialities**) in the event of

peal from the decision pronounced by a *single judge,* after hearing and examining the parties face to face (as in a case determined *by a court of conscience* in England, a *small-debt court* in Scotland, or a *justice of the peace* in either kingdom,) all the *advantages* derived from the use of jury-trial might be *introduced* into *Scottish* judicature (not to speak of *English,*) and with great *improvement* — all the *inconveniences* avoided.

To those by whom jury-trial is considered in the character of an *end,* than which nothing further need to be looked for, — or, if as a *means,* a means having, for its *sole end,* — creation, preservation, or increase of *lawyers' profit* — (and where is the man by whom it is considered in any more rational or honest point of view?) the *attachment* manifested towards the institution on *this* occasion will be apt to present itself as inconsistent with the *limits* proposed for it on that *other.*

Verily, verily, both the *defence* on this occasion, and the proposed *limitation* in that other, are part and parcel of one and the same plan, in which, to the exclusion of all other ends, the several *ends of justice* have all of them been diligently looked out for, and conjunctly, and — as far as *consistency* could be secured by endeavours — *consistently* pursued.

* I remember hearing partialities, and even the habit of partiality, imputed by many to Lord Mansfield: I cannot take upon me to say with what truth. Partly by situation, partly by disposition, exposed to party enmity, so he accordingly was to calumny. "Lord Mansfield," said his everlasting rival and adversary Lord Camden once — "Lord Mansfield has a way of saying — It is a rule with me — an inviolable rule — never to hear a syllable said out of court about any cause that either is, or is in the smallest degree likely to come, before me." "Now I — for *my* part" — observed Lord Camden — "I could hear as many people as choose it talk to *me* about their causes — it would never make any the *slightest* impression upon me." ..... Such was the anecdote whispered to me (Lord Camden himself at no great distance) by a noble friend of his, by whom I was bid to receive it as conclusive evidence of heroic purity.

In the days of chivalry, when it happened to

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the cause, it may happen to *his power*, in the event of his endeavouring to afford to that partiality a gratification at the expense of justice, to find, in the *power of the jury*, an opposing check.

Love of ease and *desire of vengeance* may therefore be set down as the two passions or affections, from the influence of which, for want of such check as the power of a jury was intended to apply, the interests of justice are most exposed to suffer in such hands.

Love of ease applies, and applies alike, to *all sorts of causes:* vengeance, unless by mere accident, to but one, and that comparatively a narrow one, *viz. libel causes;* but that, with reference to the interest of the public, so important a one, that all others shrink as it were to nothing in comparison of it.

Not only *money* and *power*, but *dignity* and *respect*, being secured by office, the chief object of solicitude and pursuit remaining to the judge, is *ease*. But, so far as jury-trial is concerned, the *ease* of the *judge* is as the *obsequiousness* of the *jury*. These *volunteers*, so different from some others, being by the very nature of their situation, and without need of exertion anywhere, kept in a state of constant preparation and established discipline, waiting and wanting for nothing but the *word of command*, and drilled into that sort and degree of intelligence, which is sufficient for the understanding it, *labour*, on the part of the judge, is reduced to its *minimum*, *ease* raised to its *maximum*. If circumstances be to such a degree favourable, that not so much as the show of explanation is found necessary, so much the better: — at the worst, all *anxiety*, and with it the greater part of the *labour*, is removed by the *pre-established harmony*.

Nor, in this way, is the *reputation* of the judge worse provided for than his *ease*. Be the man in power who he may, what can be more flattering to him — what, to a superficial view at least, more honourable, than the known fact, that under the name of *opinion*, upon all whose lot has fixed them within the sphere of his intercourse and his influence, his *will* has habitually the effect of *law*.*

For the operations of the sinister interest created by the *love of ease*, every sort of cause, and every sort of judicatory, presents, almost in equal degree, a favourable theatre.

Instead of *love of ease*, say, for shortness, *sloth:* which, though under the Pagan dispensation, neither god nor goddess, not ranking higher than with *syrens*,† is not in our days the less powerful; whatsoever might have been her influence in those early times. It is to *sloth* that, by official persons of all sorts and sizes, but particularly the highest, sacrifices are made continually, and in all shapes: in all shapes, and in particular in that of *justice*, the only one which belongs to the present purpose. Of a sacrifice of this sort, a sketch, taken pretty much in detail, has already been given in another work, *Scotch Reform*, Letter IV. Bewitching syren! A little while, and even before these pages are at an end, we shall see a pre-eminently learned and most reverend person confessing his passion for her, with scarce a gauze before his face. Part II. Chap. 4.

Plutus is apt to betray *his* votaries: to him *justice* cannot readily be sacrificed but in a *tangible* shape. *Syren Desidia* keeps her secrets better: so well indeed, that without hard labour in other quarters, and in no small quantity, sacrifices made to her can seldom be brought to light. Even when a mischance of this sort happens to them, the mischief, be it ever so enormous, finds the public — the English public at least — comparatively indifferent to it. *John Bull* — the representative of this most enlightened of all publics — is a person somewhat hard of hearing, and unless by the chink of money, and that a good round sum — the irascible part of his frame is not easily put into a ferment: and, even then, it is not so much by the mischief which the public suffers, be it ever so heavy, as by the sum of money which the wrong-doer pockets, be it ever so light, that his fire is kindled. Mischief, if the truth may be spoken, does not much disquiet him, so long as he sees nobody who is the better for it.

The *love of ease* is too gentle a passion to be a very active one: but what it wants in energy it makes up in extent: for, there is neither *cause* nor *judicatory* in which there is not place for it. As to *vengeance*, it is only now and then, and by accident, that it comes upon the stage of judicature: but when it does, such is its force, that, in the character

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the knight and his princess to find themselves *tête-à-tête* upon their travels, and the place of repose, as would sometimes happen, offered but one bed, *a drawn sword*, placed in a proper direction, sufficed to preserve whatever was proper to be preserved. This was in days of yore, when pigs were swine, and so forth. In *these* degenerate days, the security afforded by *a brick-wall* would, in the minds of the censorious multitude, be apt to command more confidence.

* This was among the well-known glories of *Lord Mansfield* — this the *finale* of his praises, sounded in his ears, in such dulcet accents, by his sergeant *trumpeter* (who was moreover one of his *master packers*) Sir James Burrow.

"I have *not* been consulted, and I *will* be heard," exclaimed one of his puisnes once, Mr. Justice Willes. At the distance of some five-and-thirty or forty years, the feminine scream, issuing out of a manly frame, still tingles in my ears. Whether any note is to be found of it in the reports of Sir James Burrow, may be left to be imagined.

† . . . . . Improba Syren
Desidia. *Horace.*

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of a sinister interest, no interest, to the action of which that situation is ordinarily exposed, can compare with it. For the exhibition of the triumphs of this tyrant passion, and of the sacrifices made to it, the *King's Bench* is, by *patent*, the great and sole *king's theatre;* the liberty of the press, its victim; *libel law*, the instrument of sacrifice.

Behind this sinister interest lurks, frequently at least, if not constantly, another, viz. *self-preservation:* an interest, than which, to judge of it from this its general name, nothing should be more innocent and uncensurable. But *self-preservation* is preservation of one's self from evil in *any* shape: a species of evil, which will be presently seen to be impending — and that, too, an evil from which, by so pleasant an operation as that of the gratification of *vengeance*, a judge, in that situation, feels himself every now and then called upon to preserve himself, and with himself, his partners in the firm of *Judge and Co.*, together with abundance of his friends, is — the loss of an indefinitely extensive lot of *money* or *power* — whether in possession, or, though not in possession, regarded as within reach: — viz. whatever portion of either is not recognised as being the offspring of any species of abuse?

Of the several departments of government, howsoever carved out and distinguished — judicial, financial, military, naval, and so forth — suppose that in all, or any of them, *abuses* exist — abuses, from which the persons, or some of the persons, by whom those departments are respectively filled, derive, each of them, in some shape or other, a sinister advantage. In this state of things, if there be any such thing as an instrument, by the operations of which all such abuses, without distinction, are liable to be exposed *to view*, the tendency of it is thereby to act with hostile effect against the several sinister interests of all these several public functionaries; whom thereupon, by necessary consequence, it finds engaged, all of them, by a common interest, to oppose themselves with all their means, and all their might, not only to its influence, but to its very existence. An instrument of this all-illuminating and all-preserving nature, is what the country supposes itself to possess in a free press; and would actually possess, if the press were free as it is supposed to be.

§ 3. *Interests, to the sinister action of which English Judges stand actually exposed.*

Thus much as to the interests, to the action of which (in the direction and character of *sinister* interests) the probity of a judge, in every age and country, is *liable* to stand exposed.

But — not to speak of the footing on which the matter may stand in this or that other country — in England at least, so far as concerns *pecuniary interest* — the most uniformly active and generally irresistible of all *sinister interests* — the degree in which the probity of a judge has ever stood, and still continues to stand, exposed — in *mechanical* language, to the action of *sinister interest* — in *chemical* language, to the action of the *matter of corruption* — is such as cannot anywhere be exceeded.

Paid as he is paid — and were he even paid on any purer principle — *trained* as he has been trained — *draughted* from the *corps* from which he has been draughted — not only his *interests*, but the *prejudices* begotten by those interests, are in a state of constant, universal, and diametrical opposition to his duty — to every *branch* of that duty — to every one, without exception, of the *ends of justice* — (*Scotch Reform*, Letter I.) — to the several most immediate ends, not to look out for any remoter ends: — to the *collateral* ends — avoidance of unnecessary *delay*, *vexation*, and *expense* — to the *main* ends, avoidance of *denial* of *justice*, and of *undue decision* to the prejudice of the *plaintiff's* side, and avoidance of undue decision to the prejudice of the *defendant's* side. In a word, in exact proportion as by or under the authority of this *Dives* the suitors are *tormented*, he himself — not only in his preceding character of *advocate* had been *used to be*, but in his present character of *judge continues* to be — *comforted!*

Not a *delinquent*, high or low — but especially not a *high* and *powerful* delinquent — with whom he is not linked by the bands of a common interest. Not a *wrong*, from which, if not *certainly* and *immediately*, at any rate in respect of its natural and frequently efficacious *tendency*, he does not derive a *profit*. The more *wrongs*, the more *causes;* and the more *causes*, the more *fees!*

Not an imaginable channel (that of punishable *bribery* alone excepted) in which, in the shape of the matter of corruption, the matter of wealth does not, under the name of *fees*, flow in daily streams into the pocket and bosom of the judge: — 1. Receipt of fees in virtue of his own office, under his *own* name. 2. Fee-yielding office, given in appearance to a *clerk*, out of whose hands the profits of it are squeezed. 3. *Sale* of a fee-yielding office for full value. 4. *Fine* or *bonus* on admission. 5. Fee-yielding office given in lieu, and to the saving of the expense, of other provision for a son, or other near *relation* or *dependent*, he *doing the duty*. 6. Or else *not* doing the duty, but paying a deputy. 7. Fee-yielding office given, or the profits of it made payable, to persons standing as *trustees*, for a principal, declared or undeclared; if undeclared, supposed of course to be the judge himself.

No other country upon earth, in which,

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among judges — (I speak always of those of the *highest* rank, to whom *alone* the *name* is given, and by whom the great and happily uncorrupt body of those functionaries is ruled,) — no other country upon earth in which, in this highest rank, amongst these monopolizers of the honour so justly due to the function, corruption has place to an *extent* approaching to that to which it has spread in this country of pretended purity, or in which it is possible that anything like equal profit should be made by it. In *other* countries, not being practicable but in the shape of *bribery* or *extortion*— practices proscribed by law, and necessarily open to detection — it is but *casual:* in England, being, in all these other forms that have been mentioned, either *legalized*, or seated *above* the reach of *punishment*, it is, in that highest rank, *constant* and *universal*.

By means of *sine-cures* in general, and *judicial* sine-cure offices in particular, whatsoever money is levied upon the subject is so much extracted from him on *false pretences:* the *tyranny* of *extortion*, and the *turpitude* of *swindling*, are combined in it. In the case of *judicial* sine-cures, by the very men by whom these enormities are punished — punished in cases in which they derive a profit from the punishment, and none from the practice — these same enormities are not only *connived at*, but *participated in*, and the profit pocketed.

Falsehood — corrupt and wilful falsehood — mendacity, in a word — the common instrument of all *wrong* — was, in the instance of all those judicatories (as any man may see, even in Blackstone,) among the notorious foundations or instruments of their power: and, in every one of them, from the beginning of each cause to the end, sometimes by the *lips* or the *hand*, always under the *eyes* of the judge, matter of constant and universal practice. Not one of them, in which it is — not merely allowed of, but encouraged; and not only encouraged, but forced, inexorably forced. Without so much as an attempt at argument, in the very teeth of common sense, *falsehood*, the irreconcilable enemy of justice — *falsehood*, under the name of *fiction* — is passed off by them upon the deluded people — passed off as the true friend and necessary instrument of justice!

In such a state of things, behold two *propositions*, between which the perplexed and deluded people are left to make their choice: — 1. That falsehood — wilful, deliberate, and rapacious falsehood — is not a vice; or 2. That it is in the power of *man* — of every man who has the power of a *judge* — to *wash away* the filth of *vice*, and transform her into *virtue*.

Hence, if mendacity and rapacity be vices, the very sink of vice is the seat of the titled lawyer, who, to his other titles, blushes not to add that of *custos morum* — *guardian of the public morals:* as if the most noted among procuresses were regularly to write herself over her door — *guardian of female chastity!*

In the character of an instrument of *corruption*, for the depravation of the *moral* part of man's frame, falsehood has been scarcely more *useful* to them, more *actively* employed, or more deservedly *prized* by them, than in that of an instrument of *deception*, for the *debilitation*, *perversion*, *confusion*, and *depravation* of the intellectual faculty.

Fiction, accordingly, has scarcely been more serviceable, in the character of an engine, for the accumulation of undue profit and illegal power, than in the character of a species and source of *nonsense*, by which the eye of the understanding, being blinded or bewildered, is thus prevented from seeing the absurdity and wickedness which is at the bottom of it.

In every one of these paths of depravity, the most depraved system that can be found in any other country is left far behind. "*Swearing*," says one of the characters in a French drama, "constitutes the groundwork of English *conversation:*" *Lying*, he might have said without any such hyperbola, lying and nonsense compose the groundwork of English judicature. In *Rome-bred* law in general — in the Scotch edition of it in particular — *fiction* is a *wart*, which here and there deforms the face of justice: in English law, *fiction* is a *syphilis*, which runs in every vein, and carries into every part of the system the principle of rottenness.

Let us steer clear of exaggeration. In this, as in other parts of the field of law, to plant *new* abuses is not even now so easy as to preserve the *old:* and as the resisting strength of the public mind increases, the difficulty cannot but increase.

But if the stock already in existence be in any degree greater than what is desirable, and especially if among them there be any of so hardy a nature as, without need of further care, to keep on growing of themselves, no very powerful plea, it is presumed, will by this admission be afforded in favour of any such unbounded confidence as must be bespoken for *judges*, by any person to whom the check, supposed to be applied to their power by that of *juries*, is regarded as superfluous.

Keeping our minds fixed on jury trial, and the extent to which it is capable of operating, in the character of a check to the enormities above mentioned, and thence on the amount of the mischief liable to be produced by the destroying or weakening of that check; another observation which, in the way of admission, it may be of use to make, is — that, so far as concerns sinister profit, by far the greater part of the work of corruption has been executed by means of a set of *devices* (see the *list in Scotch Reform*, Letter 1.) to the success of which the concurrence of juries neither is nor ever has been necessary.

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But neither are instances by any means wanting, in which, whatever be the purpose — profit, ease, vengeance, or whatever other sinister advantage may be the object of the day — complete success, even with the aid of the whole host of those devices, may, in one way or other, depend on the *obsequiousness*, so effectually secured, as above, on the part of juries. (*Scotch Reform*, Letter IV.)

Upon the whole, under the *fee-gathering* system, as above glanced at, of which system *packed juries* and *sham jury-trial* have come to make a part, the result is — that, unless in an English judge the nature of man be totally opposite to what it is in every other human being, unless this be assumed, everything at all times, rather than nothing at any time, ought in common prudence to be apprehended at the hands of an English judge.

§ 4. *Existing Popularity no sufficient Ground for Confidence.*

"But amidst, and in spite of, all this temptation, the purity of English judicature, is it not in fact so exquisite, and so universally recognised, as to have become in a manner proverbial? And in this experience is there not that which suffices for the confutation of all that theory?"

Universally? Not much short of it.—*Proverbial?* There or thereabouts. But note well the causes: —

1. Impurity, to appearance washed away by *legalization*.

2. Impurity, covered over by perpetually renewed coatings of interested *praise*.

3. By *intimidation*, impurity protected against disclosure.

These causes understood, the popularity will be seen to be *the result* — and, as such, *an indication* — not of purity, but of depravity.

Thus much for hints: — follow a few elucidations.

1. Impurity, to appearance washed away by legalization.

Be the *system* what it may, and let *impurity* have risen under it to ever so high a pitch, yet if the system be but of old standing, the sanction lent to it by *antiquity* is sufficient to prevent the impurity from fastening any the slightest stain upon the reputation of the system: as also, so the system be but legalized, upon the reputation of the judges, be they who they may, who act under it.

In the way of *sale*, or in any other way, suppose the judge to derive an advantage from an office, the profits being composed of *fees*, the aggregate amount of which it depends upon himself to increase, or preserve from diminution: for example, by increasing or preserving from diminution the number of the *occasions* on which they shall be received. If among the acts by which an advantage of this nature is capable of being reaped, there be any one which, being *prohibited* by law, and *made punishable*, is, upon occasion, *actually punished*,—then it is, that in case of his being known or suspected to have done any such act, his reputation will be more or less affected. But let that same act be allowed by law, and legalized, his reputation remains untouched.

Now there are two *sorts of law*, by either of which, or by a mixture of both, a judicial practice may be *legalized*: one is *common*, alias *unwritten* law; and this is the sort of law which (in so far as a rule of action which has no determinate set of words belonging to it can be said to be *made*) has for its makers the judges themselves; since it is by their own practice that it is made. The other is *statute* law; and in the making of this, through the means of their partners in trade in both houses, they have at all times possessed and exercised a most baneful, and, if not altogether irresistible, scarce ever resisted influence.*

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* 1. For an example of profit legalized by their own practice solely, and thence by their own sole and sufficient authority, take the case of *sham writs of error*.

By *sale of delay*, in pieces of about a *year's* length, to swindlers and others, defendants with other men's money in their pockets, on pretence of *errors*, known alike to the purchaser and the vender to have no existence — the judges lending, *every one of them*, his sanction to the imposture, annual profit, anno 1797, as per 27th Finance Report, anno 1798: —

To the Chief Justice of the King's Bench, ...	£1420 19 6
To the Chief Justice of the Common Pleas, ...	733 3 11

Aggregate *minimum* amount of corrupt profit, derived in 15 years ending 1807, by the whole *firm* (Judge and Co.) from that source alone, (according to a computation made from *a book of practice*, viz. *Palmer's Tables of Costs*, 5th edit. London, 1796, applied to "An Account of the number of Writs of Error made out by the Cursitors of the Court of Chancery from the year 1793," presented to the House of Commons in pursuance of an order, dated June 14th, 1808,) — aggregate amount for the 15 years, ... £442,045 10 2

Annual amount on an average (bating fractions) 29,469 0 0

Number of *families* (plaintiffs' families, not to reckon defendants) thus *tormented*, for the space of a year each, in these same 15 years, 9,226.

Whereof *to* (would it be too much to say, *for?*) the *comfort* of Lord Kenyon, about . .	5,373
Do. *to* Do. of Lord Ellenborough, about	3,853
	9,226

Here we see *one* specimen of the corruption, which now for these eleven years last past (reckoning from the publication of the above-mentioned Finance Reports) — for these eleven years last past (not to go any further back) — has continued on foot, with the full knowledge and connivance, if not of all the members, at any rate of all the *lawyer-members*, of both Houses.

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Of the effect of the sinister interest under which the *judicial system* of this country, or call it the *system of procedure*, has been throughout its whole texture, and all along professed by it: half a dozen different channels have above been indicated, through any one of which, *advantage* may be extracted by a judge from the *increase*, *disadvantage* sustained by him from the *decrease*, of the mass of emolument attached to an office, which he has at his disposal.

Shut up any one or more, leaving any one or more open, what is the consequence? Whatever parcel of the matter of corruption would have flowed into his pocket and his bosom, through the channels thus shut up, flows in through those that remain open: *aggregate* mass of corruption just the same *after* the law as *before*.

But besides being useless, the effect it would have had, had it had any, would have been worse than none. Affording the *appearance* of security, it would have increased confidence, diminished suspicion and vigilance: but, the security being false, and the confidence ill-grounded, increased security to corruption would have been the effect of the diminished vigilance.

The only means, but that a most effectual one, by which the matter of corruption, in the shape of pecuniary profit, can, from the source here in question, be prevented from flowing into the pocket and bosom of the judge, has been already indicated, (*Scotch Reform*, Let. I.) viz. conversion of the *variable* mass of emolument into a *fixed* one: *i. e.* of income composed of *fees*, into income in the shape of *salary*. Connivance at *non-feasance* or *misfeasance*—at neglect or malpractice, whether the result of improbity or incapacity, is the only mode in which, in *that* case, it could be either in the *inclination*, or in the *power*, of the judge to participate by connivance in the misconduct of an unfit subordinate.

Not that, by any such purely prospective change, the existing depravity of the system would be washed away, or so much as reduced:—it would be only prevented from receiving increase.

III. For an example of corruption legalized by a *conjunct* operation, viz. partly by law of the judges' own making, partly by statute law, made under their influence, as above, a case already brought to view may serve.

Under the special jury system—

1. To a *non-lawyer*, though a man of opulence, distinguished by the title of esquire, and according to the assumed principle, extra paid, in consideration of his extra opulence—to every such non-lawyer, for serving in the character of *special juryman*, in a state of confinement for an indefinite length of time, amounting to any number of hours—5, 10, 15, or 20—as it might happen, a sum which, after having under their management been subjected to such a degree of irregular excess as had become scandalous, was at length by the legislature limited to £1 : 1s.

2. To one sort of lawyer, an attorney—in his situation of *under sheriff of Middlesex*, a constant dependent of theirs—to this sort of lawyer, by their own uncontrolled fixation, for doing nothing, £2 : 2s.

3. To another dependent of theirs, their *Master Packer*, for doing, in point of labour, next to nothing—in point of effect, much worse than nothing, £2 : 2s..

Total of *factitious expense* and do. *lawyer's profit*, per cause, from that single source, viz. substitution of special to common jury trial, as above—of factitious expense having for its

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The elementary *data*, from which the above calculation has been made, are as follows:—

1. Costs of a writ of error from *Common Pleas* to *King's Bench*, exclusive of those which take place where the writ of error is not a *sham* one. *i. e.* when it is *argued*—which it scarce ever is—perhaps not once in the 15 years, £55 : 0 : 5.

2. This, multiplied by 2,650, being the number of do. writs in the 15 years, gives	£145,805	4	2
3. Costs of a do. from King's Bench or Exchequer to Exchequer Chamber, £43 : 13 : 6.			
4. This, multiplied by 5953, being the number of do. (exclusive of 46 *argued*, those *argued* making not so much as 1 in 130) gives	259,997	5	6
5. Costs of do. from King's Bench or Exchequer Chamber to the House of Lords (deduction made of expenses attending *argument*) £58 : 3 : 6.			
6. This, multiplied by 623, the number of do. gives	36,243	0	6
Total, .	£442,045	10	2

In some instances, by the variable nature of the expenses, in others by the obscurity that overhangs such accounts of them as have transpired, *errors* in the above figures cannot but have here and there been produced. But the utmost possible amount of them is not considerable enough to warrant the expenditure of the quantity of letter-press that would be necessary for the indication of these dark spots. For the same reason, the indication of a large mass of articles by which the totals of profit are increased, *viz.* as well of profit to the use of the *firm* of Judge and Co. at large as of Do. to the use of the *managing partners* in particular, is omitted. (Of this branch of the trade of Judge and Co. a particular account, extracted from the *Finance Report* above mentioned, together with other documents furnished by the *House of Lords*, and illustrated by *elucidations*, has been digested into the form of a *Table*, which, under the name of ENGLISH AND SCOTCH APPEAL TABLE for 1795, 1796, and 1797, may be had of the publishers of this work.)

II. For an example of corruption legalized under the influence of lawyers by *statute law*, take the case of the *statute* 5 and 6 Edw. VI. c. 16, "*against buying and selling of offices.*"

Object, as declared in the preamble, "avoiding of corruptions . . . . in the officer . . . . in those places . . . . wherein . . . . is requisite . . . . the true administration of justice, or services of trust."

Then comes a wordy section, prohibiting "*the sale*" and so forth, "of any office . . . . which shall in any wise . . . . concern the administration or execution of justice."

Lastly comes a section which the Chief Justice of the King's Bench and Common Pleas (not to speak of the *then* "Justices of Assize") had the effrontery and good fortune to get inserted, exempting them, (with their successors) and *them alone*, from the operation of the statute.

Not that, had it even been purged of this exemption, it was in the nature of this statute, to have contributed any thing to the object thus

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manufactured, the samples given in the note are but as so many handfuls of *tares* (let us not say *wheat*,) taken at random out of the contents of the whole granary. In a parenthesis as it were, as here, more will surely not be expected.

Such is the *mode*, and such the *hands*, in and by which, upon a careful computation, the mass of *factitious expense* and *delay* (not to speak of *vexation*,) with which the approaches to justice are clogged, have, according to circumstances, been increased to some *scores*, and even to some *hundreds of times* what would otherwise have been its amount, and the great mass of the people — from *nine-tenths* to *nineteen-twentieths* or more — fixed — with only here and there an exception produced by inconsistency — fixed in a state of perpetual outlawry: exposed without redress to *injury*, in every shape in which it is *not* deemed criminal, besides a multitude in which it *is*.

But this system of general proscription, this system of general *outlawry*, being the *work* of law, is *according* to law: the creators and preservers of it, being all men of law, are "all honourable men:" and in the words of Blackstone, "*every thing is as it should be.*"

2. Impurity, covered over by perpetually renewed coatings of praise.

Partly by the imbecility, partly by the interested artifice of the makers, the *rule of action*, *unwritten* and *written* law together, having been worked up into a *chaos*, of which it is impossible for the people to form *to themselves* any tolerable conception: hence such conception as they have of it, is grounded, exclusively, upon the *reports* made of it by the *manufacturers* themselves. But the worse they have made it, the greater their apprehension, lest its depravity should be discovered. The less *deserving* it is of praise, the greater the *need* it has of praise: the more flagrant its defects, the greater the demand for the only sort of covering of which they are susceptible. (*Scotch Reform*, Letter IV.)

1. In regard to the *system*, the more afflictive it is to the people in the character of *suitors*, the more profitable it is to the *man of law*: and the greater the profit he derives from it, the greater the quantity of praise which it is his interest to bestow upon it, and which accordingly he ever has bestowed, and ever will bestow, upon it.

2. So in regard to the *persons*, by whom, for the time being, it is administered: the persons themselves being linked together by the tie of one common interest, and all who either *dare* to publish *any* account of their proceedings, or are *qualified* to publish any tolerably *correct* one, being candidates for their favour, the consequence is — that, with the rare and casual exceptions produced by party jealousies, the same picture of scarcely diversified excellence has served for all of them at all times. The portrait is the same: and all that remains for this and that new limner is to write under it this and that new *name*.

In this happy state of things, the system, and those by whom it is *administered*, afford reciprocal demonstrations of each others' excellence: the excellence of the system is proved by the excellence of those by whom it is administered: and the excellence of those by whom the system is administered is proved by the excellence of the system *by* which they were *formed* and *under* which they *act*.

Up to the instant which sees him mounted on the pinnacle of the bench, the man of law is recognised by every body, as being of the number of those to whom *right* and *wrong*, *truth* and *falsehood*, would be matter of complete indifference, were it not for the predilection naturally entertained for the best customer: and in whom the minister of the day, through whose hands in his way to that pinnacle he must first have passed, has found an instrument no less ready, for the wages of *corruption*, to do the work of corruption upon the *largest* scale, than the individual wrongdoer has found him to do the work of iniquity upon any *smaller* scale. Yes, and although his interest remains at least as opposite as ever to the interests of the *community*, in respect to the *ends of justice*, no sooner have the form and substance of his *robes* undergone the customary *transfiguration*, than the *heart*, which they so well cover, is universally understood to have undergone the correspondent change. The *corruption* has put on *incorruption*: and the *will*, the training of which towards the paths of iniquity, had till then been so generally recognised, is now secured against all danger of taking a *wrong direction*, being itself become the *standard of rectitude*.

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effect sale of justice to those that pay the price, denial of justice to all such as cannot pay it as above	£7	8	8
Add fees to the special jurymen, who being at length rendered permanent, and placed under the dependence of the judge, are thereby become a sort of official lawyers	12	12	0
Total *minimum* of extra expense of a special jury	£20	0	8

In a table of actual costs given by Palmer, pp. 12 and 13, instead of the £7 : 8 : 8, I find for lawyer's profit £12 : 2 : 11. In this total is indeed included a charge of £2 : 2s. as paid to the sheriff for summoning the special jury: and these being 24 in number, and their abodes, for anything that appears, scattered over the country, this part of the expense cannot assuredly be set down as profit, unless it be so much over and above what the sheriff, *i. e.* the under sheriff, would have received, had the jury been a *common* one.

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3. By *intimidation*, the impurity protected against disclosure.

While, under the spur of every excitement which avarice or ambition can apply — (every thing that is said of the law and its administrators, being a sort of *prize-essay* on their perfections) — while, by the force of this *stimulus*, whatsoever features of excellence it possesses are raked together, and held up to view, decorated with every embellishment that interested eloquence can bestow — its defects, were they still more flagrant than they are, would be, as they ever have been, kept covered up and protected against disclosure, by every force that either *authority* or *power* — influence of *understanding* over *understanding*, or influence of *will* over *will* — can bring to bear upon the subject.

Point out a defect in *the system*, all *ears* are *stopped* against everything you can *say*, — all eyes *shut* against everything you can *write*: or if haply *indignation* breaks the bridle set upon the tongue and the pen by *prudence*, hatred and contempt in all their forms — sincere hatred, accompanied with simulated contempt — are poured upon your head. *Jacobin*, *leveller*, enemy of social order — theorist, speculatist, visionary — compose the arguments you have to encounter — together with whatsoever other appropriate epithets and phrases, substitutes to truth and reason, are furnished by the *courtier's and lawyer's gradus*.

Touch upon those *who act under the system* — *under* it — or, if so it please them, *over* it — point out any defect in *their* conduct in respect of it, millstones still better adapted to the purpose of *crushing*, than either hatred or contempt — ruin in the shape of *prosecution* — and, if that be not enough, in the shape of *imprisonment* — millstones ready to be let fall every moment, at the nod of caprice or vengeance — hang aloft over your head.

Victims of the system, or sympathizing with those that are, whatsoever complaints men have ventured to give vent to on this ground, terror and prejudice have combined to point to the wrong mark. The system is faultless; the creators and upholders of it are faultless: but, in the shape of wicked *attorneys*, evil spirits creep in now and then, and convert into poison the salutary remedies it affords.

No representation was ever more opposite to the truth. The quantity of mischief produced by anything which, under the name of *irregular* practice, is either punishable or censurable, is as nothing in comparison of that which is produced by *regular* practice — by that which has been legalized and organized for the purpose: and even the loopholes, at which the irregularities have crept in, are amongst the works which the regularity of regular practice has had for its objects and its uses. If judgments are *snapt*, it is because, by the pre-established mechanism (*Scotch Reform*, Letter I. *Devices* 5 and 8,) they were framed as they are, to fit them for being snapt. Now and then, in great ceremony, in the character of *scape-goat*, or, to speak in modern language, in the character of *tinman*, in expiation of the sins of the whole tribe, a miserable attorney, the child of the system, is sacrificed on the altar of offended justice: but the chief profiter by all those sins, is the *chief priest*, who, with indignation on his brow, and laughter in his heart, offers up the sacrifice.

By the inferior branch of the profession — by the *attorney* branch — the system has all along been taken such as it has been found: it is by the two superior branches — composed of *judges* and *advocates* — advocates in the *senate*, judges occasionally in the *senate*, constantly on the *bench* — that it has been made such as we *see*, or rather as we *feel* it.

Of the three branches, the inferior, as it is the most populous, so is it in its nature the least impure. To an attorney — those operations and instruments excepted, in which the part he takes is compulsory and unavoidable, having been imposed upon him by judges — to an attorney, as such, the language of insincerity is never necessary. On the part of the advocate, the necessity and consequently the practice, is constant: the only choice there is for him, is between the *more* and the *less*.

Such is the mind of the *advocate*: and the *mind* of the *advocate* is the *stuff* of which the mind of the *judge* is made.

Filling the bench from no other fund than the bar, is it not exactly such a mode as if boarding-school-mistresses and governesses were never to be chosen but from brothels?

Yet, by giving to the matter and language of the law, a texture nauseous to every liberal mind, and impenetrable to every mind not sharpened by hunger, an exclusive admission to the bench has been secured, in favour of a profession which, if either love of justice or of truth had been considered as necessary qualifications, would for ever have stood excluded.

Obvious as they are, against all these considerations the *non-lawyer* has learnt to shut his eyes. At an early age, the picture of the law drawn by Blackstone had been put into his hands: a picture in which all deformities and turpitudes are plaistered over with the most brilliant colours. To pry into the original would require hard labour: to glance over the picture requires but a glance. Set before him the original, he turns aside from it: to an insight into the original, he prefers a dream over the picture.

Thus it is that, when rightly considered, the *popularity* of the system — paradoxical as

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at first sight the proposition cannot but appear — the *popularity* of the system, so far from being a conclusive proof of its excellence, affords a *proof*, inasmuch as it is among the *results*, of its depravity: the *depravity* being the *cause*, of which, through the intervention of the *intermediate* causes that have been brought to view, the *popularity* has been the *effect*: —

1. *Depravity*, viz. in respect of *factitious delay*, *vexation*, and *expense*; 2. *Profitableness to lawyers*, in respect to their profit upon the expense; 3. *Popularity among lawyers*; 4. *Praises by lawyers*; 5. *Popularity* among the people at large, but more particularly among the *ruling classes*, connected in so many points of sinister interest with the lawyers, — in *three* out of the above *five* we see the *intermediate* links, by which a *cause* and *effect*, to a first view so wide of each other, have been brought into connexion.

Important as these topics are — viz. the *goodness* of the system, and the *virtue* of those who act *under* or *by virtue of it*, to the present purpose they belong in no other point of view than this: — of the packing system — being a system which, it has already been seen, is *established*, and, as it will soon be seen, has been *avowed*, the effect — (quoth the argument *against* it — say, in lawyer's jargon, *the declaration*) — is to destroy this part of the constitution, by destroying the check which the power of the jury was intended to keep applied to the power of the judge: — nay; but so transcendently pure, (quoth the argument in favour of the package — say *the plea*) so transcendently pure, under and by virtue of the system, is the virtue of the judge, that no such check is or ever can be necessary. Such being the plea, it became necessary to *traverse* it: and if the *plea* itself be no *departure*, so neither is the *traverse*.

CHAPTER VII.

CHIEF PURPOSE, CRUSHING THE LIBERTY OF THE PRESS.

§ 1. *Liberty of the Press — has it any and what Existence?*

WE come now to the grand and paramount use of the *packing system* — the *crushing the liberty of the press* — destroying whatever remains of it undestroyed.

To prevent indistinct or erroneous conception, a few words of explanation may here, once for all, be of use.

King *de jure* and king *de facto*, is a distinction familiar to every eye, that has ever glanced over English history. The same distinction must be applied to *the liberty of the press*, by whosoever would be saved from falling into error and heterodoxy on this scabrous ground: *Liberty of the press by law?* No. That sort of liberty excepted, which consists in the non-existence of a *safety-shop*, in the shape of a *licenser's office*, no such thing either *has*, or ever *has had*, any existence. So, embodied in the person of Lord Mansfield, the soul of the *custos morum* certified to some of us in 1770.* So, embodied in the person of Lord Ellenborough, the same guardian spirit of good order confirmed to us in 1804.†

Liberty of the press *de facto?* Yes: viz. *that* which, being *contrary to law*, proscribed by law, has all along maintained a sort of rickety, and still maintains a momentary half-existence, in the teeth of *consistency* as well as law, by means of *breach* of the law in *low* situations, and *non-execution* of the law in *high* ones.

Hence it was, that in the place of any such words as *destruction* or *destroying* — which otherwise would have been so much more obvious — it was necessary to look out for some other of a less determinate import, such as *crushing*, as above. For of any such word as *destroying*, the effect would have been to bring in with it, and keep attached to it, the idea of *existence*: than which, as above, a more dangerous heresy could not, by any Englishman, Protestant or Catholic, be entertained.

But, forasmuch as, in neglected bodies, vermin of all sorts will be apt to crawl into existence, hence comes the necessity which persons in "*high situations*" are under, of keeping in their hands the means of *crushing* — as often as in any such shape and stature as to render itself troublesome, it happens to it to show itself — the liberty — but, forget not for a moment, the *de facto* liberty — of the press.

In the first place, while pen and ink remain still at command, I shall endeavour to bring to view a sketch — an extremely slight and temporary one — (for that is all that can here be given) — a sketch, or rather as before a *sample* — of the interest which not only *Judge and Co.* as above, but moreover the *high connexions* of the *firm*, have, in keeping the liberty of the press in the sort of abortive embryo state in which it has so effectually been preserved; viz. by the hands by which, had convenience prescribed, and possibility

* "The *liberty of the press* consists in no more than *this* — a liberty to print now *without* a licence, what formerly could be printed only *with* one." Per Lord Mansfield, in K. *v.* Woodfall, as quoted in a note in the trial, K. *v.* Almon. 2d June 1770, p. 62.

† "Gentlemen, the law of England is *a law of liberty*, and consistently with this liberty, we have not an *imprimatur*: there is no such *preliminary licence* necessary." Lord Ellenborough in K. *v.* Cobbett, as reported in Cobbett's Register for June 4, 1804.

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permitted, it would have long ago been no less effectually destroyed. I shall then, but rather in the way of *recapitulation* and *reference*, than in any other, add the little that can be necessary to show the assistance that may always be depended upon from the zeal of the *master packer's office*, and the discipline of the *guinea corps* on the occasion of so necessary a service.

In the catalogue of abuses, judges have *their* peculiar articles, other high-seated persons have theirs. But, towering above all the rest, *one* abuse there is, in the profit of which Judge and Co. find their partners, in the very highest and most impregnable situations: in the one House, in the other House, in the Cabinet, in the Closet: yea, even among those whom "*the king delighteth most to honour*." I speak of that congeries of abuses, the component elements of which are *law sine-cures*.

So far as judges alone are concerned, it has been slightly touched upon already: but in consideration of the prodigious increase of strength given to the alliance bipartite between *judges* and *wrongdoers*, by the accession of *court favourites*, and the *triple alliance* thus formed for carrying on with irresistible force the predatory war against the common enemies, viz. *liberty* and *justice*, a few ulterior elucidations, respecting the nature and cementing principle of the alliance, may have their use.

§ 2. *Improbity in Judges, and their high allies — its Hostility to the Press.*

Some years ago,* on the examination of a question of finance, I found occasion to inquire in what way, by the taking out of the pockets of the people a given sum of money, the greatest possible quantity of mischief was produced. The result was — by assessing it, in the form of a tax, on the several *operations* and *instruments*, the performance and exhibition of which were rendered necessary to a man to enable him, whether in the shape of plaintiff or in that of defendant, to take his chance for justice.

Affliction heaped upon affliction, in the case of him who *has* wherewithal to comply with the exaction — *denial* of *all relief*, *exposure*, or rather *subjection*, to all imaginable *wrongs*, in the case of him who *has not* wherewithal to satisfy the exaction — such are the shapes, in one or other of which, or both, the mischief manifests itself; and in the latter case, being the case of *virtual outlawry*, a vast majority of the subjects of the British empire, — say *nine-tenths*, say, more likely, nineteen-twentieths, subject to limitations and exceptions too particular, and, upon the whole, of too little extent to admit of notice in *this* place, — would be found. (See *Scotch Reform*, Letter I. and elsewhere.)

The quantity of money, taken from a man on this account, being, in the mathematical sense, given, *i. e. determined* — what the *appellation* employed on that occasion may happen to be — for example, a *tax* or a *fee* — as well as what the *pocket* may happen to be, in which it finds its resting-place after it has gone out of his own — whether that of the *public*, for example, or that of a *judge*, or other man of law — is to *him*, and in respect of the quantity of suffering, of which, in his instance, the defalcation is productive — a matter of indifference. Yet so it happens, that though the quantity of money so raised being *given*, a *tax* on *law proceedings* is by far the worst of all possible *taxes*, yet, by the money raised on law proceedings under the name of *fees*, mischief, to an incomparably greater amount has been produced, than by money raised on the same occasion under the name of taxes.

The reason is altogether simple. By the *man of finance*, at whose instance the money is exacted in the name of *a tax*, the *occasions* on which it is exacted are *not created*, but taken as they are found. But of the *man of law*, especially in the station of *judge*, by whose *power*, and, in some shape or other, for whose *benefit*, the money is exacted in the name of a *fee*, it *has* been in the power to *create* the occasions on which it is exacted, *which accordingly he has done*. And in this difference, the immense load of misery, so regularly manufactured by *judges*, their connexions and dependents, has found its cause. The amount of this mischief has in some sort found its expression, in the difference between the amount of *factitious delay*, *vexation*, and *expense*, habitually created in the *technical* mode of procedure, styled on this account the *fee-gathering*, as contradistinguished from that *natural* mode, which, without a total dissolution of the bonds of society, could not have been by its overbearing antagonist utterly expelled. (See *Scotch Reform*, Letter I. throughout.)

Of these fees, by the concourse, as usual, of sinister design and accident, masses of emolument, of different bulks, from that of a bare subsistence, to ten, twenty, or even thirty thousand pounds a-year and upwards, exacted by so many different persons, have been composed; and here comes the community of sinister interest, by which the judges of all the high judicatories without exception — and in particular the Chief Justice of the King's Bench — the master-manufacturer of *libel law* — and in effect the absolute master of *the press* — have been linked together: linked with each other, and with some of the most influential members of those supreme assem-

* Anno 1796, in the pamphlet entitled *Protest against Law Taxes*.

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blies, from which alone remedy to abuse, in this or any other shape, can come.

Where, of the masses of emolument thus formed, the bulk has been to a certain degree *moderate* (being received in all cases in the name of *reward for service*,) the reward has been suffered to remain in the pocket of him by whom the service has been performed.

Where it has happened to the mass to swell to such a bulk as to attract the notice of irresistible rapacity in a higher sphere, it has been fastened upon as a *prey*: and, a *comparatively small* pittance, though by the *experiment* proved to constitute an *adequate* compensation for the burthen of the service, being left to the low-seated individual by whom the service was performed, the remainder has been seized by the high-seated personage, by whom in *that* shape no service whatever has been rendered, even in pretence; and to whom, in many instances, it has never been *necessary*, that he should have rendered to the public any the smallest service whatsoever, in *that* or any *other* shape.

Of these enormous masses of misery-making emolument, outstripping by far in magnitude, if not in mischievousness, whatever has been produced by the judicial system of any other the most outrageously misgoverned country, some have been seized by judges, and above all by the Chief Justice of the King's Bench — others having been left in the hands of the crown, have fallen a prey to the vultures that hover about a court. And here we see a natural bond of the closest union between *Court* and *Bench*.

At present (it may be said) — whatsoever may have been the case formerly — at present no such sinister interest is created by any of these masses of emolument. For, at present — the maxim having been established, that no mass of emolument in possession, and obtained without breach of law, shall be taken from any man without an equivalent — no man has any interest in the retention of them — neither a judge nor any one else.

To this observation the colour of reason is not wanting, but the substance is. Allowances which, under the spur of reform, have thus been given by the legislature under the name of *equivalents*, have scarce ever been complete.

Of the masses of emolument in question, viz. those attached to sine-cure or overpaid judicial offices, it is the nature to go on increasing, as population and wealth increase, from year to year: and this, even in the way of *natural* increase, and setting aside whatsoever *factitious* increase may be contrived to be given to them by the combined ingenuity of the partnership. But by any allowances that should be given in lieu of them, under the name of *equivalents*, no such increase would be experienced: they would be *fixed* sums in the nature of *pensions*.

Of those ever increasing masses of emolument, not only the *possessors* but the *expectants*, know of course much better than to submit to any *commutation*, so long as, by any means not punishable, it appears possible to avoid it.

Pillaging the future as well as the present, the *Gavestons* and *Spensers* of successive ages — nor let the present be forgotten — contrived to obtain in *expectancy* those masses of ill-collected and ill-bestowed wealth, life after life. *Passion* and *policy* have here acted in alliance. Passion *seized* on the booty: policy rendered it the more *secure*. The more enormous the prey, the greater and more burthensome would be the *compensation* necessary to be given for it under the name of an *equivalent*. So long as the burthen falls on men whose afflictions are productive of no disturbance to the ease of the man of finance, it tells for nothing. [*See Protest against Law Taxes.*] So long as the burthen continues to be imposed by a tax which, though beyond comparison more mischievous than any other, was not of his imposition, the man of finance had no personal concern in the matter, and how enormous soever may be the mass of misery produced, it formed no object of his care. But to provide the compensation, if that came to be provided, was so much hard labour to him: while of those he has to deal with and to cajole, the great crowd is composed of such as care not what mischief is produced by a tax, or anything else they are *used to*, but cry out of course against everything of that sort, as of any other sort, when it is *new*.

The law moreover is a sort of *black lottery*, a lottery of all prizes indeed without blanks, but the prizes so many *negative* quantities; instead of so much *profit*, so much *loss*; and the same confidence in fortune which secures to a man's imagination the *acquisition* of prizes in the *state lottery* so called, secures to it the *avoidance* of them in the lottery of the law.

And thus it is that by every continuance given to this species of depredation a fresh obstacle to the abolition of it is opposed.

"You call this economy, do you? Know then, that, by this economy of yours, the mass of public burthen, so far from being diminished, will be increased," cries the iron-hearted sophist, in whose balance the heaviest load of misery, in which he and his confederates expect not to bear a share, weighs but as a feather.

Turn now to the despot of the press, and consider what in this state of things the plan of policy is which in his situation a man may be expected to pursue. His first object would of course be the affording the most effectual protection to abuse in those instances in which

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the benefit of it is in the whole, or in part, reaped by himself and his own immediate connexions.

But to protect that same abuse with its benefit against *limitation*, and even *reduction*, under the name of *compensation*, might require support and alliance elsewhere. To protect with effect the abuses, the benefit of which accrued immediately to himself, it would therefore be necessary for him to extend his protection without distinction to all established abuses from which any other man so situated as to be capable of giving him the needful support, derived or could conceive himself to derive in any shape a benefit: in a word, to act in the character of *protector-general* of all established abuses.

The *liberty of the press* being their common and irreconcilable enemy, the liberty of the press became the necessary object of their common and interminable war: existing, it was to be destroyed: not existing, it was, so long as possible, to be prevented from coming into existence.

And here we see the *knight's service* looked to at the hands of the *guinea corps* and its *squires*.

Of the energy and effect, with which this conspiracy among governors against good government has been carried on, diverse exemplifications will present themselves as we advance.

§ 3. *Incapacity in Judges, and their high allies — its Hostility to the Press.*

By this copartnership in the profits of misrule, the bond of union, formed as above, between judges and the other leading members of government, is a *constant* one. But besides this, there is another which, how frequently soever exemplified, may, in comparison of the former, be termed an *occasional* one: I speak of that in which *incapacity* — congenial and mutually sympathizing incapacity — is the cementing principle.

Suppose a judge — no matter in what particular respect — incapable of discharging the duties of his office: discharging them *ill:* or — what constitutes the most palpable of all exemplifications of incapacity — *not at all.* If on the part of the suitors to whom such his incapacity has been a source of injury — or, on the part of other persons, prompted by *sympathy* for their sufferings, or by the pure *love of justice*, *facts* indicative of this incapacity, or *complaints* grounded on those facts, were made public, the consequence *might* be — an obligation on his part to withdraw from the situation, his continuance in which had rendered him an instrument of such extensive injury.

To any such unfit judge, a free press would naturally be an object no less odious and formidable than a prison to an ordinary delinquent, whose situation had not elevated him above the reach of justice.*

But by the same cause, *incapacity*, by which a free press is thus rendered an object of hatred and terror to a functionary seated in the situation of judge, it would of course be rendered an object of the like emotions to a functionary in any other situation: to a functionary, to whose apprehension any the least danger were to present itself

* One shape, and perhaps the only shape, in which, in the station of *judge*, the existence of *incapacity* can be seen standing out of the reach of doubt, is *indecision*. For, if *habitual*, it may in this shape stand expressed and demonstrated in *figures*. Thus, suppose, in a given single-seated situation, three judges occupying that situation successively for the same length of time. The first leaves no arrear: the second leaves an arrear: the third clears off the arrear that had been left by the second, and himself leaves none. Suppose now, on the part of the second, the degree of *indecision* such, that the number of litigated cases decided upon by him was not a *tenth*, not an *eighth*, not a *sixth*, or suppose it were as much as a *fourth*, or even as a *third*, of the number despatched by his predecessor in the same length of time. In such a case, not only must the unfitness of such a judge for the situation be clear to everybody else to whom these propositions are known, but it is impossible that it should be matter of doubt to the incapable judge himself. But the judge being thus necessarily and fully conscious of his incapacity to discharge the duties of the office, the result in point of *mischievousness* and *wrongful profit* is — besides the infinite and inappreciable mass of misery produced on the part of suitors — *peculation* to the amount of the undue profit extracted from the office, the duties of which were thus left unperformed.

Incapacity in a shape thus palpable, swollen to a pitch which, on the part of him who reads of it, puts belief to the stretch, is among the endemical diseases of the present time, and not the least bitter of the bitter fruits of *libel law*. Not long ago one case of this sort came out incidentally in the *House of Commons:* (*See the Times Newspaper*, *4th July* 1807, *Cobbett's Parliamentary Debates*, Vol. IX. p. 731,) and in the profound indifference with which the facts were heard, though exhibited in *numbers* (to avoid ambiguity, let us say in *figures*) may be seen an argument, a stronger than which can hardly be looked for, by those to whom a recurrence to first principles in the constitution of that assembly is regarded as a necessary measure. One instance happened thus to transpire in print, from the only place, from which it is possible for grievances of that sort *so* to transpire: everywhere else, *libel law* keeps them from the press with the degree of certainty, for the securing of which libel law with its terrors was and is intended. But it would be informing him of the existence of the sun at noon-day, were it to be said to a man of business in the profession, that the one here alluded to is not the only instance in which, but for the interested connivance which seals up lips within doors, and the terror which chains down all pens without doors, incapacity not less palpable would long ago have been brought to public *light* at least, if not to *justice*.

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of his seeing such his deficiency exposed to view.

Men who, to all practical purposes, are seated above the law (and the existence of an indefinite multitude of men self-seated in the situation, is a fact unhappily but too incontestible,) men so circumstanced as they — have nothing to fear from any *other* quarter — so, as far as they have anything at all to fear from *any* quarter, — have everything to fear from the *liberty of the press.*

Accordingly where, on an occasion already spoken of, the recent grand attack was made upon that branch of English liberties, and for the more effectual accomplishment of those purposes (if of any purposes at all) the modern case *de famosis libellis* was displayed to view, and the fundamental principles of *libel law* developed, and adapted to *existing circumstances* — among the propositions laid down upon that occasion was — that in speaking (*viz.* in print) of any man "*placed in a high situation,*" to say anything "*meaning to infer that*" he "*is ill-placed*" in (such) "*his high situation*" is "*a libel:*" and this, even although his unfitness for that high situation be of no worse sort, than that which is not incompatible with his being "*fit for the ordinary walks of life.*"*

If there be any way in which it is possible for the hand of power to afford *protection* and *encouragement* to *mis-rule* — to mis-rule in *all* its branches — it is surely this: *viz.* the threatening with the vengeance of the law all such as shall do anything towards holding it up to public view: and towards this end, whether anything, which it is possible to do by the exercise of judicial power, has been left undone, let *this* doctrine, together with the *sentences* with which in other prosecutions it has been followed up, declare.

But the persons, at whose instance and for whose protection these sacrifices were made — these sacrifices of public welfare to private convenience — were a junto of "*great characters*" — some learned, some unlearned — "*placed*" (but whether *well* or *ill* let him pronounce to whom liberty and imprisonment are matters of indifference) "*placed,*" at any rate, somehow or other, "*in high situations:*" and, in the instance of some of these *great characters*, how urgent the demand was for this sort of sacrifice, will, at the peril of imprisonment, appear in another place.

CHAPTER VIII.

THE EXCHEQUER PACKING OFFICE SUFFICES.

KEEPING the liberty of the press, as it were, in a state of constant *annihilation* (if the expression may be allowed,) being thus, among persons "in high situation," in these days of unexampled purity, the common object — the one, and almost the only one, in the attachment to which the agreement is among them constant and almost universal — come we now to the convenience afforded by the chief jury-packing office for so necessary an operation.

By the chief jury-packing office I mean, on this occasion, *that* one of the seven which has for its master packer the deputy-remembrancer of the Exchequer. To this distinction the title of that office is rendered incontestible by two considerations: — 1. The *permanence*, and thence the operations of which it is the result, are, in the instance of that office, avowed by *the judge*, and defended by him *upon principle;* 2. The number of juries thus nominated in that office is equal to little less than that of all the juries nominated in like manner in all the other offices put together.

The proposition to be proved is — that though the Exchequer — the judicatory to which this office belongs, is not itself the judicatory in which the operation of crushing the liberty of the press is carried on, yet, for the purpose of that operation, the system of package, and the collection of permanent special jurymen which compose the produce of that system, are no less effectually sufficient, than if the scene of the chief part of the jury-packing business were an office immediately under the judicatory in which the business of crushing the liberty of the press is carried on.

On this head little remains but to recapitulate. Here may be seen the grand *house of call* for *guinea-men:* here the *receiving-house* in which the recruits are *enlisted:* here the *parade* on which they are *drilled:* here the grand *muster-roll* — the *select and secret qualified list* — on which they are *entered:* here the *register-office*, in which their "*connexions,*" *&c.*, and thence their qualifications, are registered, and accordingly inquired after by all lips to which the information can be of use.

But why (it may still be said) lay so much emphasis on the Exchequer? If the Exchequer has its two master packers, has not the King's Bench as many?

Yes: but in the Exchequer, the permanence, which but for actual packing could not have place, is, as hath just been mentioned, irrevocably *confessed*, or rather *professed:* in the King's Bench, no such avowal can be produced. It is in the Exchequer alone that the main body of this corps being in constant service, it is there and there alone that, with certainty, and without effort, the trust-worthiness — the degree of discipline — of each member is known to the whole staff.†

* The King *v.* Cobbett. Cobbett's Register, 2d June 1804, p. 853. Charge given to the jury by Lord Ellenborough, Lord Chief Justice.

† Special jury causes, in a year, in the Exchequer, 84: in the King's Bench, crown side, but 15. Phillips, p. 169.

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To this office, therefore, it is, that in case of need (when a libeller, for example, is to be punished for calling a man, in "*high situation*" by his father's title, or for questioning his *fitness* for his office,) a *solicitor to the crown* would send his order — saying, "Pick me out a good dozen for King's Bench service."

"Oh — but all this — so far, at least, as concerns King's Bench, and libel law — is but mere surmise; *the work of audacious imagination*. In the Exchequer, be it as you say: but in the King's Bench no such packing can be proved; *no such* purposed selection ever yet took place. There, at least, all is *simplicity*; there, all is purity."

Thus far my objector. But, could even any such *negative* be demonstrated, still the reasons for the pulling down of all jury-packing offices — for the complete abolition of the *guinea trade* — for the disbanding of this *standing army* — this *noble* army, not of *martyrs* but of *martyrizers* — would not lose any thing of their force. Down to *this day* nothing of the kind has been done. Be it so: but why? Because down to *this day* nothing of the kind has been necessary. Come *to-morrow*, and the necessity may come along with it: and so sure as the *necessity* of the practice comes, so sure the practice comes along with it.

Convenience — slight convenience — has long since sufficed to establish the practice in *one* judicatory, the *Exchequer*: and the united forces of *self-preservation* and *vengeance*, will they not, in case of *need*, suffice to establish the same practice in the *King's Bench*?

In the *King's Bench*, as well as in the *Exchequer*, the officer, whose practice is thus open to suspicion, actually exists: by him the selection is actually made — made in every individual instance: by him, whether he will or no, a certain quantity of information, relative to the characters and dispositions of the individuals, out of whom he has to choose, is possessed. Thus much is matter of notoriety: and the only proposition, liable to be made a question of, is — whether, in the view of gaining additional information, it be likely that, in case of *need*, he or those whose interest in the business is more immediate — for example, in a state libel case *the solicitor of the crown* — will seek for it at the hands of the correspondent officer of that *other* court, in which the opportunities of obtaining that sort of information are more *abundant*.

To such a question, can there be any other answer than this? If, of the sort of information in question, there be, in the judgment of those whose interest it is that the judgment be correct, a deficiency in the *King's Bench*, to that *other court*, and that *office* in it which is best able to supply the deficiency, application will accordingly be made. If no such deficiency, then no such application.

But, if in the King's Bench there be no such *deficiency*, then so it is that, in the King's Bench, the mischief in question exists already in its full force.

In a cause in the Exchequer, inquiry at the hands of the officer by whom those jurors are selected, it is in the books of practice stated (we have seen) as being, on the part of the solicitor on each side, a *matter of duty*, regularly recurring, and regularly fulfilled. That which, in the *Exchequer*, it is matter of duty to the *solicitor* to be inquisitive about, can it, in the *King's Bench*, be matter of duty to him not to know?

In the Exchequer, the permanence being, by the chief judge, avowed and justified, the *selection* — in a word, the *packing* — without which the *permanence* could not have been established — is thereby avowed and justified along with it. Of the *matter of justification* which, in the judgment of the chief judge, is, in the Exchequer, so conclusive, is it credible that there should be any *deficiency* — and in a case of *libel law* too — in the *King's Bench*? "*To confound social order — to destroy the characters of all public men — to defame the justice of the country — to bring government itself into hatred and contempt — Conspiracy to do all this and more — necessity of defeating it: — Ferment raised by wicked and artful men — necessity of allaying it: — Respect for every thing that is respectable, on the point of being shaken off — necessity of fastening it on.* All these topics — with a thousand others equally conclusive — all of them in such well-exercised and skilful hands — can they fail of furnishing argument enough, to justify the adopting, in *one* court, a practice, which, with so complete a success, has so long been established in *another*?*

* Since the matter of the text was transmitted to the printers, accident has thrown in my way a pamphlet, bearing date in 1794, and entitled, "A Vindication of the Conduct and Principles of the Printer of the Newark Herald..... by Daniel Holt, Printer of the Newark Herald." In page 19, I read, in form of a note, a piece of history, which presents itself as not altogether inapposite to the present purpose. To any one, by whom any degree of credence is given to the statements contained in it, it will serve to prove two things: 1. That at the time in question, viz. anno 1777, no *guinea corps* had, for *King's Bench service*, received as yet any such organization, as we have seen, and shall see again and again, a corps of that description and character to have received for *Exchequer service*: 2. That though *in the King's Bench, and for King's Bench service*, no such regular corps had been as yet put upon the establishment, a strong sense of the need which the service had of such a corps was entertained, and that honourable court had accordingly found extra work for one of those *fiction-mints*, without which not one of all the honourable courts in Westminster-hall would hold itself competent to go through its business. The note is as follows: the passage which it quotes

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Were it possible that, for such *unction*, the cruise for example, of Mr. Justice Grose's eloquence should ever fail — fail when addressed, if needful, to his own subordinate — addressed

is here inserted at second-hand, the original not being at present within reach.[a]

"As the nature of forming *special juries*," begins the note, "is not generally understood, at least in the country, I shall make no apology for introducing the following curious and interesting account of the manner in which they are selected, to the notice of my readers. It is taken from the trial of John Horne Tooke, Esq. for a libel, in the year 1777:—

"'The special jury,' says Mr. Tooke, 'you may imagine, are taken indifferently, and as it may happen, from a book containing all the names of those who are liable to serve. I thought so when I read the act of parliament appointing the manner in which they should be taken; bu when I came to attend to strike the special jury, a book with names was produced by the sheriff's officer. I made what I thought an unexceptionable proposal: I desired the master of the crown office (whom I do entirely acquit, and do not mean the slightest charge upon)—I desired the master of the crown office that he would be pleased to take that book; open it where he would; begin where he would, at the top or at the bottom; and only take the first forty-eight names that came. I said, I hoped that to such a proposal the solicitor of the Treasury could have nothing to object. I was mistaken; he had something to object. He thought that not a fair way (turning round to the attorney-general.) There were witnesses enough present; and I should surely be ashamed to misrepresent what eight or nine people were present at. He thought that not a fair way. He thought and proposed as the fairest way, that two should be taken out of every leaf. That I objected to. I called that picking, and not striking, the jury. To what end or purpose does the law permit the parties to attend, if two are to be taken by the master of the crown office out of every leaf? Why then need I attend? Two may as well be picked in my absence as in my presence. I objected to that method. The master of the crown office did not seem to think that I had proposed anything unreasonable. He began to take the names; but objected that he could not take the first forty-eight that came, because they were not all special jurymen; and that the names of common and special jurymen were mixed together, and that it would be a hard case that the party should pay the expense of a special jury and not have one; that they were expected to be persons of a superior rank to common jurymen. I could have no objection to that, provided they were indifferently taken. I said, Take then the first forty-eight special jurymen that come. He seemed to me as if he meant to do it. He began, but as I looked over the book, I desired him to inform me how I should know whether he did take the first forty-eight special jurymen that came, or not; and what mark or description or qualification there was in the book, to distinguish a special from a common juryman? He told me, to my great surprise (and he said he supposed I should wonder at it,) that there was no rule by which he took them. Why then, how can I judge? You must go by some method. What is your method? At last the method was this: that when he came to a man a woollen-draper, a silversmith, a merchant (if merchant was opposite to his name, of course he was a special juryman,) but a woollen-draper, a silversmith, &c. he said that there were persons who were working men of those trades, and there were others in a situation of life fit to be taken. How then did he distinguish? No otherwise than this; *If he personally knew them to be men in reputable circumstances, he said, he took them*; if he did not know them, he passed them by. Now, gentlemen, what follows from this?

"'But this is not all. The sheriff's officer stands by, the solicitor of the treasury, his clerk, and so forth; and whilst the names are taken, if a name (for they know their distinction) if a name which they do not like occurs and turns up, the sheriff's officer says, 'O, sir, he is dead.' The defendant, who does not know all the world, and cannot know all the names in that book, does not desire a dead man for his juryman. 'Sir, that man has retired.' 'That man does not live any longer where he did.' 'Sir, that man is too old.' 'Sir, this man has failed, and become a bankrupt.' 'Sir, this man will not attend.' 'O,' it is said very reasonably, 'let us have men that will attend, otherwise the purpose of a special jury is defeated.' It seemed very extraordinary to me, I wrote down the names, and two of them which the officer objected to, I saved. 'I begged him not to kill men thus without remorse, as they have done in America, merely because he understood them to be friends to liberty; that it was very true, we shall see them alive again next week, and happy; but let them be alive to this cause.' The first name I took notice of was Mr. Sainsbury, a tobacconist on Ludgate Hill. *The sheriff's officer said, he had been dead seven months.* That struck me. I am a snuff-taker, and buy my snuff at his shop; therefore I knew Mr. Sainsbury was not so long dead. I asked him strictly if he was sure Mr. Sainsbury was dead, and how long he had been dead? 'Six or seven months.' 'Why, I read his name to-day; he must then be dead within a day or two: for I saw in the newspapers that Mr. Sainsbury was appointed by the city of London, one of the committee' (it happened to be the very same day) 'to receive the toll of the Thames Navigation:' and as the city of London does not often appoint dead men for these purposes, I concluded that the sheriff's officer was mistaken; and Mr. Sainsbury was permitted to be put down amongst you, gentlemen, appointed for this special jury.

"'Another gentleman was Mr. Territ. The book said he lived, I think, in Puddle Dock. The sheriff's officer said, '*That gentleman was retired; he was gone into the country; he did not live in town.*' It is true, he does (as I am told) frequently go into the country (for I inquired.) His name was likewise admitted, with some struggle. Now what followed? This dead man and this retired man were both struck out by the solicitor of the treasury; the very men whom the sheriff's officer had killed and sent into the country were struck out, and not admitted to be of the jury. Now, gentlemen, what does that look like? There were many other names of men that were dead, and had retired, which were left out. There is something more unfortunate in the case of a special jury. *The special jurymen, if they fail to attend that trial for which*

[a] Collated with original, St. Tr. xx. 687.—*Ed.*

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in form to none but the culprit libeller, who for his better instruction in the art of *decorum*, is about to be sent to school for a few years at Dorchester or Gloucester — addressed *in form* to none but this one scholar, but moreover in effect to the master packer, who is sitting under the head master all the while — were it in the nature of things that such a fountain should run dry, is not the eloquence of Mr. Bowles, published and to be published, or even though it were *not* published, always at command?

Thus, then, in respect of law and practice, in the field of *libel law*, and in respect of the *liberties* disposed of by it, stands the result. In a case (let us now return to abstractions) in which the personal interests and passions of the judge, or of any of his *closest connexions*, are most deeply affected, the selection of the individuals, by whom, in the character of *jurymen*, a *check* is *supposed* to be constantly applied to the power of the judge, is as constantly in the power of the very person or persons, to whose power the authority of these assessors is *supposed* to operate as a check: and this with the fullest and freshest information, not only of their characters and circumstances in every respect, but also of their disposition in relation to *this*, as well as all other points of judicature that come under their cognizance.

If this statement be correct, what are *jurors*, in all such cases, but mere *puppets*? —*jury-trial*, but a solemn indeed, but disastrous *puppet-show*? The judge but *showman*, who, with the intervention of a system of machinery more or less complicated, moves the wires: the judge, who in the sort of case in which his interests and passions are most deeply affected, is in effect judge, sole judge, in his own cause.*

I spoke of *decorum*. Yes, it is for breaches of decorum that, under a judicatory thus constituted, libellers (and who is there that is not a libeller?) have so recently been crushed by punishments of such unexampled rigour: for a libel on the *king*, imprisonment for two years: for libels on judges (and let not the climax pass unnoticed) — for libels on judges, parties and judges in their own cause — imprisoment for three years, with *et cæteras*: — imprisonment to the destruction of livelihood in a scene of secluded penitence.† Nor

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they are appointed, are never censured, fined, nor punished by the judge. In the trial of one of the printers, only four of the special jury attended. This is kind in the chief justice, but it has a very unkind consequence to the defendant, especially in a trial of this nature; for I will tell you what the consequence is. The best men and the worst men are sure to attend upon a special jury where the crown is concerned; the best men, from a nice sense of their duty; the worst men, from a sense of their interest. The best men are known by the solicitor of the Treasury: *such an one cannot be in above one or two verdicts; he tries no more causes for the crown.* There is a good sort of a man, who is indeed the most proper to try all this kind of causes; an impartial, moderate, prudent man, who meddles with no opinions. That man will not attend; for why should he get into a scrape? He need not attend; he is sure not to be censured; why should he attend? The consequence follows, that frequently only four or five men attend, and those such as particularly ought not to attend in a crown cause. I do not say that it happens now. Not that I care. I do not mean to coax you, gentlemen: I have nothing to fear. You have more to fear in the verdict than I have, because your consciences are at stake in the verdict. I will do my duty not for the sake of the verdict. Now what follows this permission to special jurymen to attend or not, as they like best? Why, every man that is gaping for a contract, or who has one, is sure to show his eagerness and zeal.'"

Thus far the speech of Mr. Horne Tooke, anno 1777, as quoted from his trial in Daniel Holt's pamphlet of 1794.

Turning to a pamphlet bearing date the present year 1809, and entitled, "Report of the Trial in an Action for a Libel, contained in 'A Review of the Portraiture of Methodism:'" tried at Guildhall, before the Right Honourable Lord Ellenborough, and a special jury, Saturday, March 11, 1809, I read in the charge of the Lord Chief-Justice, a passage, from which an inference, though of itself certainly not a conclusive one, may be thought to arise, that in this line of service the advantage *of permanence* is not more fully understood, and experienced in the *Exchequer*, than it is already in the *King's Bench*: — "As to the measure of damages," concludes his Lordship, "it is so entirely and properly in your province, *and you are so in the habit of exercising your discretion upon these subjects*, that I shall not say a word about it."

Thus far the Lord Chief-Justice. The functions of special jurymen had therefore, it should seem, become *habitual* to the gentlemen to whom he was addressing himself, and *that* to his Lordship's knowledge.

* That, for the purpose of enforcing obedience to his own judicial orders, he ever *has been so*, and (subject always to eventual check from some still higher tribunal) ever *ought to be*, is most indisputable: hence the *practice* and *propriety* of *attachment for contempt*.

In Lord Mansfield's reign, under the convenient *laxity* of the word *contempt*, an attempt was made to extend procedure by attachment to the case of a *libel*, when directed against a Judge. The *nerves of Lord Mansfield* failed him: that project was abandoned. At present, whatsoever other wants may be supposed, of *nerves* at least there is none. But, so long as juries are what, according to *Exchequer* doctrine, they not only *are* but ever *ought to be*, to what use should a project so full of trouble, if not of hazard, be revived?

† That on the propriety of this *climax* a judgment may be formed, let the following brief observations be considered: —

1. In the whole field of government, there is not an abuse which could not, without any reflection on the personal conduct of the king, be laid completely open, and receive its correction: in the particular field of judicature, there are few,

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let this be unremembered — viz. that in the most *recent* of those cases, *perseverance* — perseverance in this novel track of rigour — is announced."

"But, under libel law as it stands — and now that the punishment awaiting a delinquent is understood to be thus destructive, —can you really regard it," it may be said, "*a probable event, that a special jury of Englishmen* (who cannot, all of them, be supposed to be regardless of English liberties) will persevere in pursuing a course which, in your view of it, would be so completely destructive of English liberties? For admitting that, under the influence of a sinister interest so constituted, obsequiousness will carry a man a *certain* length, it follows not by any means that, to the sinister effect of such influence, there should be absolutely no limits. Even from persons thus unhappily exposed to temptation, can depravity, such as that would be, be seriously to be apprehended? In English bosoms *is there no* such sense as *a sense of shame . . . . ?*"

I answer — that, to destroy the *de facto* liberty of the press, as completely as the *de jure* liberty of it has for ages been destroyed, there needs not any sort of conduct, to which any such word as *depravity*, or anything like it, is wont to be applied: — in a word, that there needs not, on the part of any one individual breathing, anything which any man can reasonably be expected to be ashamed of.

But, for the reader to be the more effectually impressed with the truth of this proposition, *three* other matters of fact present themselves as necessary to be borne in mind:

1. That, with libel law in its freshest state — the state in which it is declaredly ready and about to be enforced — enforced by punishments, the rigour of which has just been brought to view — the existence of a *de facto* liberty of the press, in any sense in which it is capable of operating as a check to misconduct in any shape, on the part of public men, is perfectly incompatible: I mean if the intentions, declared as above, be, with any tolerable degree of steadiness and consistency, pursued.

2. That, by the mode in which judges are *in use* to *direct* — and, without exposing themselves to reproach, or so much as complaint, may for ever *continue* to direct juries, it is rendered difficult, to a degree of hopelessness, for a jury, without setting its face, in a style of marked opposition, against the opinion of the judge, to avoid convicting a man as for a libel, be the paper of a sort ever so necessary to the preservation of English liberties.

3. That, the fixation of the *punishment* not lying within the province of the jury, no consideration grounded on its *magnitude*, can operate in such a manner as to afford, to the publisher of any, the most meritorious composition, any chance of acquittal at their hands.

A small sample of libel law, in its freshest state, will form the business of the next chapter.

if any, abuses, that could be fully brought to light, without reflection, in some shape or other, upon the personal conduct of the judge.

2. The king, let *him* conduct himself as he may, cannot, while the constitution stands, be removed or suspended; at least not without the concurrence of *both* houses of parliament: a judge, if *he* misconducts himself, may be removed, on an address, by *either* house of parliament.[a] Canvassing the personal conduct of the *king* has therefore a mischievous tendency, without any useful one: while canvassing the personal conduct of a *judge* has, on the other hand, a useful tendency, without any pernicious one. To the prejudice of a judge, whatever is said, has, even if it be *false*, *this* good effect — viz. that it applies to his conduct the only efficient check of which *in practice* it is susceptible — the attention of the public eye. — *Two* years imprisonment for a libel on the king: *three years* imprisonment, with *et cæteras*, for a pair of libels on a pair of judges!

[a] *Observer*, *May* 7, 1809 — "*May* 6, 1809. In the court of King's Bench, George Beaumont, the printer and publisher of a Sunday newspaper, was sentenced *for a libel on the king* to be imprisoned *two* years in Newgate, to pay a *fine of* £50, and find securities at the expiration of his imprisonment for five years — himself in £300, and two sureties in £200 each. Mr Justice Grose, previously to passing sentence, declared that, from the *frequency* of this offence, it became necessary to punish it with exemplary severity." Two years is not more but less than three years: but in the two years case it was *only the king* that was libelled.

[a] By 12 & 13 W. III. c. 2, § 3, judges are only removable on the address of both Houses. — *Ed.*

CHAPTER IX.

INSTRUMENTS FOR CRUSHING THE LIBERTY OF THE PRESS.

§ 1. *Doctrines and Rules.*

A VIEW of libel law *as it is*, confronted with a view of what *it ought to be*, is destined for a separate publication: slight, indeed, and consequently imperfect and inadequate, is the only view that can be given of it here. But, without something under this head, of the most fatal of all the effects of the packing system — of that, in comparison of which all others put together are as nothing — not any even the slightest conception could have been conveyed.

Even the slight sample or two, which have incidentally presented themselves, may have been sufficient to induce a suspicion, and that not a light one — that the treatment which, under the notion of *law*, has been given — and at this moment is ready to be given — to

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the press, is, if persevered in with any tolerable degree of steadiness, incompatible with every *political*—not to say moral—use of it.

A fundamental sophism, from which every other rule, doctrine, or maxim, draws its mischief, is one that, from having never been announced in words, is not the *less*, but the *more*, mischievous. It consists in confounding on this ground *demand for punishment* with *demand for disapprobation:* or, what comes exactly to the same thing, assuming, that the *one* being established, the *other* follows of course. "Is this *proper?* Is this *decent?* Is this *endurable?*" Ask the orator. Reinforcing at every step the intensity of the disapprobation which the appeal thus made to the passions is calculated to call forth: at the same time, in whatever degree, if in *any*, that hostile sentiment be actually called forth, verdict of *guilty* is the verdict, the necessity of which is thus constantly *assumed*, and which by the delusive force of the assumption is but too constantly produced.

Reducing this notion to a determinate *proposition*, with a correspondent practical *rule*, let us add to it a few others, expressive as far as they go, of the actual state of libel law: stating, under the head of each, the documents from which it has been deduced. Taken together, they will suffice, it is apprehended, to establish—and with a degree of evidence sufficient, at least, to the present purpose—that, under libel law *as it is*, *prosecution* and *conviction* are the same thing: and that, when a political libel is the offence, the *form* of *jury trial* is but a melancholy farce.

1. A written and published discourse is *a libel*, and every person who contributes to the communication of it, punishable in respect of it, if there be to be found in it any passage or passages, the *tendency* of which is, in any degree, to expose *government*, *i. e.* any member or members of the governing body—considered in that character—to "*disesteem.*" *Rule*—Punish whatever tends to bring a man in power into "*disesteem.*"

2. —— or, in relation to any person in any *high situation*, affording any *inference*, representing him as *ill-placed* in it, and questioning his *fitness* for it. *Rule*—Punish whatever imputes unfitness to any man in office.

3. —— or which has had, or has tended to have, any such effect as that of "*prejudicing*," "*hurting*," "*injuring*," or "*violating*," the *feelings of any individual:*" more especially if his "*situation*" be a "*high*" one. *Rule*—*Punish whatever hurts anybody's "feelings."*

4. In any written and published discourse, whatsoever passage constitutes just cause for *dislike*, constitutes just and sufficient cause for punishment. *Rule*—*Punish whatever you dislike.*

As to the *grounds* of these doctrines and these rules—viz. the grounds relied on as constituting the warrant for regarding the *doctrines* as having by competent authority been *delivered*, and the *rules* as being by like authority about to be *pursued*, they are taken from the report, as published in *Cobbett's Weekly Political Register*, for the 2d of June 1808, of the trial in the cause entitled "*The King against Cobbett:*" being an information filed *ex officio* by the Hon. Spencer Perceval, his Majesty's attorney-general, against the defendant, "for publishing, in the Weekly Political Register, of the 5th of November, and the 10th of December 1803, certain libels upon the Earl of Hardwicke, Lord Lieutenant of Ireland; Mr. Justice Osborne, one of the judges of the court of King's Bench in Ireland; and Mr. Marsden, under secretary of state for Ireland: on which information the defendant was tried in the Court of King's Bench, at Westminster, on Thursday the 24th of May 1804, before the Lord Chief-Justice, Lord Ellenborough, and a special jury."

The words of the several passages quoted are copied from that Report.

N. B. This libel is the same, on account of which Mr. Justice Johnson, Judge of the court of Common Pleas in *Ireland*, was afterwards, to wit, on the 23d of November 1805, convicted in the character of the *author*, on a trial at bar, in the Court of King's Bench in *England*.

§ 2.—1. *Rule concerning Disesteem.*

Proof *of the Rule.*—Ch. Justice, p. 854.—"It is no new doctrine, that if a publication be calculated to alienate the affections of the people, *by bringing the government into disesteem*, whether the expedient be *ridicule* or *obloquy*, the person so conducting himself is exposed to the inflictions of the law. It is a *crime*. It has *ever* been considered as a crime: whether it be wrapped up in *one* form or another. The case of the King *v.* Tutchin, decided in the time of Lord Chief-Justice Holt, has removed all ambiguity from this question."

Thus far the Lord Chief-Justice. While these pages are writing, persons out of number are amusing themselves with rendering what, I hope, appears to themselves, at least, good service to the country, by complaining of *abuses*, which *to them* appear as if existing in the government of it: and, to *some* at least of these persons, these abuses appear to have swelled to such a magnitude, as that nothing short of an alteration in the mode of representation in parliament, can operate as a sufficient remedy. Have or have not such proceedings, and such publications, a tendency not only to "*bring the government into disesteem*," but "*to alienate the affections of the people*" from something or other—for example, from a parliament composed as at present? If yes, and if, to any person so occupied, it

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should happen to cast an eye upon this page, I would beseech him to ask of himself whether a cell in Dorchester or Gloucester jail be or be not a *fit* abode for him — to consider whether he be in a state of *fit* preparation for a visit of some years length to either of those theatres of *lawful* reform — and in what manner accommodation may in the most convenient manner be provided, in those or some other boarding-houses of the same class, for himself and the quantity of company whom he *ought* to have there.

Another hint to reformers: — Among the situations at the disposal of this noble and learned teacher of the arts of decency and candour — situations, the profit of which helps to constitute that part of his Lordship's remuneration which is composed of patronage, is one, which, in 1797, produced from £1200 to £1300 a-year,* part of the profit of which consists in the letting of lodgings, for which it is part of his lordship's occupation to provide lodgers. Amidst the demands, which the execution of the law thus delineated would, if executed with anything like impartiality, be productive of, for accommodations in this and other such schools of reformation, would not forecast suggest the endeavouring to secure some of the most convenient of these lodgings by a suitable retaining fee?

§ 3. — 2. *Rule concerning Feelings.*

Proofs. — Ch. Justice, p. 854.—1...." By the law of England there is no impunity to any person publishing anything that is *injurious* to the *feelings* and happiness of an individual.". . . .

2. *Ib.* " If a man publish a paper, he is exposed to the penal consequences, as he is in every other act if it be illegal; and *it is illegal*, if it tends to the *prejudice* of any individual."

3. *Ib.* . . . . " The question for your consideration is, whether this paper is such as would be *injurious* to the individuals, and whether," &c.

4. P. 858. " It has been observed, that it is the right of the British subject *to exhibit the folly or imbecility* of the members of the government. But, gentlemen, we must confine ourselves within limits. If in so doing, *individual feelings are violated*, there the line of interdiction begins, and the offence becomes the subject of penal visitation."

5. *Ib.* " If you are of opinion that the publications are *hurtful* to the individuals or to the government, you will find the defendant guilty."

On putting together these passages, all out of the same speech — out of the same *charge*, and that not a very long one — it seems evident enough, that if they mean anything, they mean this — viz. that it is a *crime* for *any man* to write anything which it happens to *any other man* not to *like*: or more shortly, that if a man publishes what he writes, under Lord Ellenborough at least, *it is a crime to write.* For, what published book was ever *written* — and, being written, *read* — in which somebody or other has not found something or other that *he did not like*: — in *plain* language, that he did not *like*; or, in the language of *avenging sentimentality*, that was not " *injurious*," " *prejudicial*," " *hurtful*," or " *violational?*" — add, for further enrichment of the language, *vulnerary* to him or to his feelings?

And how am I to know whether what I am writing, and meaning to publish, will, or will not, meet with any man to whose " *feelings*" it will be " *injurious*," and so forth? Why, by his prosecuting me or *not* prosecuting me. And if he prosecute me, what will be the consequence? Why, that I have committed a crime, and must be convicted of course: for if his taking upon himself the expense and vexation of carrying on a criminal prosecution be not a proof that his feelings have been injured, prejudiced, hurt, or violated, nothing else can be. Therefore, as already observed, admit but this doctrine to be *good* law — (and, coming from the source from which it comes, how can it be otherwise?) — *prosecution* for a libel is in every case *itself* evidence that the paper prosecuted for *is* a libel, and that evidence is *conclusive*.

The *criterion* — it must be confessed — the criterion thus afforded, is an extremely simple one. No man can fail — or, at least, no man can *long* fail — to know, whether he *is*, or is *not*, under prosecution. If, then, for anything that I have written, I am not yet prosecuted, what I have written *is not* as yet a libel: if, for anything in that way, I am already under prosecution, then it *is* a libel. Such being the criterion, to the noble and learned inventor, nothing — it may well be presumed — can be more satisfactory. But to us without doors, who are as yet out of jail, and who, if we did but know how, had rather continue at large than be locked up in one, is there any and what course left open, for learning, at any earlier point of time, whether this or that article, which it would be satisfactory to us to see made public, will or will *not* be productive of an effect which to *us* would be so serious a one.

A high-sheriff, for example, or other chairman, of a county or other meeting, in which a set of *resolutions* are voted, imputing either " *folly or imbecility*," or *corruption*, to any of those right honourable persons to whom those qualities, or some of them, have of late, in one or other meeting of that sort, been now and then imputed — any such presiding character, though not a " *great character*," wishing to

* Finance Committee of 1798. Report, 27, p. 164-5.

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give to these *resolutions* a certain degree of publicity, and at the same time not wishing to pass his time in a *prison*, though it were for no more than *three*, or even for no more than *two* years—what is he to do?

For knowing what, on a given occasion, a man's *feelings will* be—or rather, and to come somewhat closer to the point, what on that occasion *he will declare* his feelings to be—I know of one course, and but one, which is—to put the question to himself. On this principle, to save circumlocutory description, I will venture to submit to the consideration of such gentlemen as it may concern, the form of a *Note*, which, short and simple as it is, may, it is humbly hoped, be found to be not the less well adapted to the purpose:—

Circular.

Mr. —— or Sir —— presents his respectful compliments to Lord Castlereagh, and begs the favour of being informed, whether the "*exhibition*" of his lordship's *folly*, or his lordship's *imbecility*, or his lordship's *corruption*, should it take place, would be "*prejudicial*," "*hurtful*," "*injurious*," or "*violational*" to his lordship, or to his lordship's *feelings*." The like to the right honourable Spencer Perceval, &c. &c. &c.

To any such chairman, who, though not "a *great character*," will, at any rate, be a *distinguished* one, should it happen to be apprized of the qualification which, from certain exemplifications (whereof presently*) that have been given of the magnanimity of the said Mr. Perceval, may *by implication* be understood as being allowed to be, *in a certain sense*, and *under certain restrictions*, capable of exempting a man from the lot to which a liberty of this nature would otherwise so justly doom him—should it happen to him, accordingly, to be capable of making the proper responses to the catechism formed by that no less *religious* than *high-born* and *high-seated* gentleman—and in particular to his grand Latin question, *Quo patre natus*—wrapping himself up in Mr. Perceval's virtue as if it were his own; what may also happen to him is—to turn aside with disdain from this humble but well-meant endeavour to save him from what it may happen to him not to like. But whatsoever may happen to be the security, real or imagined, of a person so distinguished, the resource may not be altogether beneath the attention of those who, like myself, belong to the undistinguished herd: I mean the printers who propose to *print*, the booksellers who propose to *sell*, any such resolutions, as well as the *readers*, to whom in reading of them it might happen not to take sufficient care to keep their *tenor* and *purport* to themselves.

* See Ch. XI. § 2.

§ 4.—3. *Rule concerning Unfitness in high Situations.*

Ch. Justice, p. 857.—After having, on the occasion of a sentence, mentioned above, undertaken, as above, to enumerate the "*libels*" contained in that one sentence, coming to that which in this list happens to occupy the second place—"He admits," says his Lordship, speaking of the libeller—"he admits this noble person" (Lord Hardwicke) "to be celebrated for understanding the modern method of fatting a sheep, as well as any man in Cambridgeshire."—"Now, gentlemen," continues the Lord Chief-Justice, "what does this mean? Does it not clearly mean to *infer*, that Lord Hardwicke is ill-placed in his *high situation*, and that he is only *fit* for the common walks of life."

Thus far the Lord Chief-Justice.—Among the persons just spoken of as being suspected—and surely not altogether without apparent cause—of endeavours used to bring the government into disesteem, I have observed some, by whom declarations have been made, expressive of an opinion—and that, too, pronounced still more "*clearly*" than in the way of "*inference*"—concerning Lord Viscount Castlereagh, and the now right honourable Spencer Perceval—the same right honourable person whom we then observed officiating, we have seen how, in the character of his Majesty's attorney-general—as being respectively somewhat "*ill-placed*" in one of their "high situations." After passing eighteen months in prison for one of the two libels thus uttered, and made public, the libellers, of whom I am speaking, are they prepared to pass another eighteen months, in the same place and condition, for the other of these same libels?

Being a man that writes, or even though he be but a man that thinks—whosoever prefers liberty to imprisonment, safety to destruction, "*let him think of these things.*"

"*To doubt the fitness of him whom the sovereign hath chosen, borders near on sacrilege.*"

Such is the rule laid down by some learned law-lord, Chief-Justice of the Emperor's Bench, in the time of the Emperor Justinian—"*Sacrilegii enim instar est dubitare an is dignus sit quem elegerit imperator.*" C. *ff.* 9, 29, 3.

Of the constellation of "great characters" in "high situations," by whom the rule thus copied, and those others that match so well with it, have been called for and *laid down*, let any one who dares, and who (to use the words of the Lord Chief-Baron) "*thinks it worth while*," say—that they, or any of them, are "*ill-placed*" in, or "*unfit*" for, those their respective situations.

Thus much, however, may be a question—though alas! it is but a speculative and barren one—whether, for their own feelings at least, they are not, more particularly some of

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them, rather unfortunately *placed* in point of *time*. In England, in these our days, at this early part of the nineteenth century, their "*feelings*" are forced to content themselves with comparatively scanty gratifications: gratifications, such as may be afforded, for example, by the spectacle of a judge driven off the bench, and a few years'—as yet no more than a few years'—imprisonment bestowed upon a few paltry booksellers.

And without seeking to send them, or any of them, so far back as to those imperial times from which this rule of theirs was with so much fidelity transcribed, or even of those of our own first Defender of the Faith, who even without the benefit of the act called, in the newspapers, sometimes the *cutting act*, sometimes the *Ellenborough act*, enjoyed in the course of his life the deaths of no fewer than 70,000 of his subjects in the character of criminals—had the noble and learned godfather of that law been as free to choose the *time* as he is the *place* of his *circuits*, would not the *western circuit*, anno 1685, have been a choice more congenial to "*feelings*" such as his, than any *circuit* can now be in these degenerate days, *ubi pro duritie temporum*, as the learned anatomist so feelingly laments, *vivos homines dissecari non licet;* when, in plain English, such is the hardness, such the ferment of and in *the times*, that men cannot be found to be cut up alive for the amusement of learned eyes: so that noble lords and honourable gentlemen, who have a *taste for torture* (understand for witnessing it, not for feeling it,) are reduced to content themselves with such inferior, yet never-to-be-parted-with gratifications, as the agonies of bulls, dogs, cats, and horses can afford.

§ 5.—4. *Rule concerning Dislike.*

Follows a list of *qualities*, which, on the supposition of their being to be found in a discourse of any kind, have been stated as being of a nature to excite, in the breast of any person by whom it is heard or read, a sentiment of *disapprobation* or *dislike:* the existence of which sentiment has, by the chief-justice of the King's Bench, or by the attorney-general, with the concurrence of the said chief-justice, been stated as constituting a sufficient warrant for pronouncing such discourse (it being consigned to writing) *libellous*, and for punishing with any number of years imprisonment, besides other punishments, every person who, in any way, has contributed to the communication of it:—

1. *Want of fairness.* 2. *Want of liberality.* 3. *Flippancy.* 4. *Deviation from decency.* 5. *Unbecomingness.* 6. *Impropriety.* 7. *Slanderousness.* 8. *Ill-nature.* 9. *Want of candour.* 10. *Tendency to ridicule.* 11. *Contradictoriness*—viz. with reference to matter of opinion advanced by another person.

Follow now the correspondent passages serving as grounds of this *doctrine*—proofs of the existence of the corresponding rule:—

It cannot with *reason*, and therefore, it is presumed, it *will* not be expected, that, on the occasion of every one of these *qualities*, either the chief-justice, or, under his allowance, the attorney-general, shall, in precise logical form, be seen exhibiting, and re-exhibiting to the jury, an argument in any such words as these—*viz.* this quality exists in the discourse in question—the quality, and, in respect of it, the discourse, will be regarded by you with *disapprobation* or *dislike*—therefore, in consideration of such disapprobation or dislike, even although the discourse should be found to contain no other passage in it, having the effect of exciting, in your breast, the like sentiment, you will regard yourselves as *bound* to join, in pronouncing against the defendant, the verdict *guilty*.

That such, throughout, was their intention, may surely be regarded as placed sufficiently out of doubt by the following considerations:

The *purpose*, and *sole* purpose, for which, on that occasion, the defendant was brought before the jury, was—that it might be ascertained, whether, in respect of the discourse in question, he was, in the character of a *libeller*, *guilty*, and as such *punishable*. In any other view than that of contributing *to this* effect, had anything been, either by the chief-justice or the attorney-general, said of the discourse in question, it would have been *irrelevant:* and not merely irrelevant, but *insidious* and *injurious;* having, for its object and tendency, the causing a man to be convicted, as if it were criminal, on account of a portion of discourse which, in their own opinions, was *not* criminal. Not but that, on several of these occasions, the passage taken for the subject of animadversion is, in *express* terms, pronounced, by one or other of these official persons, "*a libel*" or "*libellous:*"—and since, in this respect, no line of distinction is drawn between any *one* of the passages so animadverted upon, and any *other*, it will surely not be regarded by anybody as a question open to dispute, whether, among all these several *qualities*, and all these several corresponding *passages*, there were *any one*, in respect of which it was not part of the design and endeavour, of the official persons in question, to cause the passage to be by the jury reputed *libellous*, and the defendant dealt with accordingly in respect of it.

The *qualities*, successively ascribed to the various parts of the *printed discourse*, and, in respect of which, it is supposed to be the design and endeavour of the *spoken speech*, to cause the *discourses* to be considered as *libellous*, are hereinafter designated and introduced by the words *quality* or *qualities*.

The passages respectively adduced to serve

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as proofs, that, on the occasion of each such respective *quality*, such was the design and endeavour, are designated and introduced by the words *proof* or *proofs*.

I. QUALITIES.—1. *Want of fairness.* 2. *Want of liberality.*

PROOF.—Attorney-general, p. 827. "Now, Gentlemen, is there anything in all this that can be called a *fair* and *liberal* description of a public character . . . . . ?"

II. QUALITIES.—3. *Flippancy.* 4. *Deviation from decency.*

PROOF.—Attorney-general, p. 827. "Gentlemen, I have already adverted to the *indecency* and *flippancy* of many expressions made use of in this libel. If this libeller had been hurried away with the temptation of saying a flippant thing, *I* should not have thought it a subject of criminal prosecution. But, in the case before you, it is *criminal*, as indicating the *spirit* with which it was written, and as being descriptive of the *mind* of the man at the time he was making them. I would not, however, be understood to say, that even in the warmth of discussion upon public men and public measures, *decency* of language *ought not* to be preserved, and that *any deviation* therefrom is not *punishable*. . . . ." [Here the doctrine in question is directly avowed: by the attorney-general avowed, and by the chief-justice never contradicted: *viz.* that for every written discourse to which a deviation from decency can with propriety be imputed, a publisher is punishable.]

III. QUALITIES.—5. *Unbecomingness:* and again *Flippancy.*

PROOF.—Attorney-general, p. 820. "Surely no one who has the least *liberality of feeling*, could think it *becoming to taunt such a gentleman as Mr. Addington.*" [Taunt him, *viz.* by naming him by his father's title.] P. 828, "I again say, that for any publication calling Mr. Addington, *Doctor Addington*, or any *flippancy* of that nature, *standing by itself*, *I* should think it *beneath the dignity* of that right honourable gentleman to make it the subject of a prosecution." N. B.—*Beneath* his *dignity* only, not *above* his power. Learn we hence, that if at this moment there exists out of a jail any such person as a newspaper editor, or a political writer, on any other than one side, it is owing to the joint magnanimity of "*such a gentleman*" *as Mr. Perceval*, and "*such a gentleman*" *as Mr. Addington.*

IV. QUALITIES.—6. *Impropriety* (as intimated by the word *ought.*) 7. *Slanderousness.* 8. *Ill-nature.*

PROOF.—Attorney-general, p. 829. After speaking of divers passages in which Lord Hardwicke had been spoken of as being "*a good father, a kind husband, fond of literature, and agricultural pursuits*—" "Qualities like these" (continues he) "*ought* to have made the libeller pause, before he ventured to attack such a character." . . . . . "Gentlemen, you must shut your eyes—if you do not see that these amiable qualities are attributed to Lord Hardwicke, with a *slanderous*, with an *ill-natured* meaning."

V. QUALITIES.—9. *Want of candour.*

PROOF.—Attorney-general, p. 830. "Will any man believe that there is any degree of *candour* in saying, that all that has been done by the British government for Ireland, is to send them a sheep-feeder from Cambridgeshire, and a strong-built chancery-pleader from Lincoln's-Inn, *when I tell you* that . . . . Ireland . . . . is defended," &c. &c.

Learn we hence, that whatever "*degree of candour*" there may happen to be in any given discourse, it is in the power of the honourable Spencer Perceval—(but whether in his character of Spencer Perceval, or in his character of attorney-general, *that* we are left to learn as we can)—at any rate in the power of somebody—and the safest conclusion seems to be, in the power of any and every man that is in power—to *divest* the discourse of such its *candour*, and thereby subject the author and publisher of it to punishment: and this by so easy a process as "*telling*" the jury anything that shall have the effect of a contradiction to this or that part of the discourse.

On this head, not a particle of Mr. Attorney-general's law, howsoever objected to (as we shall see) by the defendant's counsel,* is dissented from by the Chief-justice: on the contrary, from what immediately follows, let any man judge, whether, by implication at least—by necessary implication—it has not the whole of it, been confirmed.

VI. QUALITIES.—10. *Tendency to ridicule.*

PROOF.—Chief-Justice, p. 849. Upon the above and other passages, the observation of the defendant's counsel (Mr. Adam) had been, p. 842, that "if the doctrine so laid down were admitted . . . . the freedom of discussion, relative to public men and public measures, would depend—not upon a point of right, but upon the *taste* of the attorney-general:" and that "the controul which the attorney-general is" [thus] "desirous of putting upon it [the liberty of the press] would go to extinguish it for ever," p. 842.

"Ridicule," he had afterwards contended, p. 849, "is a weapon which may be fairly and honourably employed, especially when it is in the true spirit of English humour, and for an object purely of a public nature." After speaking of the nick-name of *Carlo Khan*, formerly given to Charles Fox, and the print of a colossus, comprehending all Scotland within the stride of its patronage—when, after adducing these examples, he goes on to say, "Lord Hardwicke is again repre-

* See Chap. X.

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sented as devoted to agricultural pursuits," .... he finds himself thus interrupted by the Lord Chief-Justice—

"Do you maintain that *a person has a right to ridicule his neighbour?*"—Mr. ADAM.—This is an information for a *public libel*, and not for private ridicule. LORD ELLENBOROUGH.—"I suppose you have some authority. I do not wish to restrain your arguments, but it is a doctrine which *never was, and never can be, maintained.*"

VII. QUALITIES.—11. *Contradictoriness; viz.* when manifested, in terms of a certain degree of strength, towards some proposition or propositions, that have been advanced by some one else. [*N. B.*—In the instance in question, it was a mere matter of *opinion*, relative to the *state of the nation*: not any *specific matter of fact.*]

PROOF.—Chief-Justice, p. 856. Afterwards, in his *charge*, speaking of one of the sentences in the paper, his Lordship says, p. 856, "Now the *libels* in this sentence are these"—thereupon, coming to one of them, he proceeds, and exclaims, "Is it to be *endured*, that it should be said of *any* person, but more especially of a person *sitting in the capacity of a judge*, that he had *poured a broadside upon the truth of the fact?*"—*N. B.* Sitting in the capacity of a judge. Yes: so the judge in question, Mr. Justice Osborne, was: but *how?* not *hearing a cause*, but *haranguing* upon *politics*.

The disapprobation excited by this expression, in the bosom of our Lord Chief-Justice, was, it seems, of such a strength as to be past *endurance*. A similar, if not exactly equal, sentiment is what he assures himself of finding prevalent, in the bosoms of the *jurors* (the guinea-men,) to whom he is addressing himself: and on this sentiment it is that he relies as sufficient of itself to entitle him to expect, at their hands, a verdict of "guilty," enabling him to subject the victim to any number of years' close imprisonment in a scene of solitude.

The word "*fiction*" will of itself suffice to satisfy any person, who can *endure* to look into Blackstone's Appendix, with the corresponding chapters, in this view, that in the universal scramble for fees, of which the jurisdiction of the Westminster-hall courts in its present state is the result, the war was carried on in no other manner, and by no other *arms*, than by *broadsides*, which then were, and still continue to be, "*poured upon the truth of facts.*" If, then, anything like consistency were to be expected among persons in such "*high situations*," so far exalted above all need of consistency, and all fear of shame, long ago would every man, who has ever vended, or in any other way contributed to the dissemination of the contents of Blackstone's Commentaries, have been prosecuted by the Hon. Spencer Perceval, and convicted, as of course, by one of Lord Ellenborough's juries.

Signing a notorious falsehood—is this pouring a broadside upon fact? If so, is there a *term*, in which broadsides are not poured upon facts by hundreds, not to say thousands—poured by the very hand of this very judge, (with fees for the same) or to his profit, and under his orders?

By the smoke of these *broadsides*, have not the paths of judicial procedure been converted into—what they were meant to be converted into—a *jungle*, penetrable to the eyes of tigers, impenetrable to the eyes of suitors, who, such of them as do not perish in it, are dragged through it?

Before he was what he is—this noble and learned Lord Chief-Justice—was he not an advocate? Does not the occupation of an advocate consist in *pouring broadsides upon the truth of facts*—of whatsoever facts are set up for him as a mark by the attorney, who brings him his brief with this or that number of guineas marked on the back of it?

Was not he a special pleader? Knows he not what a *sham plea* is?

The distinction between the cases in which falsehood is either *allowed of* or *compelled*, and those in which it is *made punishable*, had it *ever*—has it *to this day*—any better object, than the enabling well-paid marksmen to *pour broadsides upon the truth of facts?* (*Scotch Reform*, Letter I. Device 10: *Mendacity-licence.*)

What *is endurable*—yes, and *endured*, and with as much complacency as if *vice* were *virtue*, and *falsehood* necessary to *justice*, is—that by these *guardians of public morals, broadsides* should be poured without ceasing—*poured upon the truth of* facts:—what is *not endurable*, is—that they should be *told* of it.

Decency and candour! What important words! How necessary is correctness to the conceptions which it may happen to a man to have annexed to them! What is there that does not depend upon it? Open one *report* more, which shall be quoted presently, and you may see the whole fabric of English liberty hanging upon the import of these two sounds. Note well the fineness of the hair: observe well the thinness—the mathematical thinness, or rather phantasmagorical tenuity of the *partitions*, which at this hour divide liberty from thraldom. Observe how pleasantly the hair, if not sufficiently cut through *already*, may be cut through at any time; nobody, but those employed in cutting it, knowing or caring anything about the matter.

(Campbell's Nisi Prius Reports, Easter Term, 48 Geo. III. 1808, p. 359, Rex *v.* White, and another, London sittings after Easter Term, 48 Geo. III. Before Mr. Justice Grose.)

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Information (*ex officio*) "by the Attorney-general against the proprietor and printer of a Sunday Newspaper, called *The Independent Whig*, for a libel upon Mr. Justice Le Blanc, and the jury before whom the captain of a merchant ship had been tried for murder at the Old-Bailey . . . . .

Grose J. said *it certainly was lawful, with* DECENCY *and* CANDOUR, *to discuss the propriety of* the verdict of a jury, or the *decision of a judge;* and if the defendants should be thought to have done *no more* in this instance, they would be entitled to an acquittal: but on the contrary, they had transgressed the law, and ought to be convicted, if the extracts from the newspaper set out in the information contained no reasoning or discussion, but only declamation and invective, and were written not with a view to elucidate the truth, but to injure the characters of individuals, and to bring into *hatred* and *contempt* the administration of justice in the country."

"The defendants were found guilty on this and a similar information, and sentenced to three years' imprisonment." Thus far the reporter. The similar information was for a similar libel on Lord Ellenborough, the Lord Chief-Justice.

You, to whose imagination any such imprudent fancy should at any time present itself as that of taking for the subject of free "discussion," under favour of any such licence, as above, the "*decisions*," or the conduct of an English "*judge*," would you know whether the expressions that have presented themselves to your pen are consistent with the rules of "*decency and candour?*" Go to the house of penitence at Dorchester or Gloucester — repent there for three years, or any such increased number of years, as for the allaying of the increasing ferment shall have been deemed necessary *— repent, and when your course of penitence has there been run through, perhaps even at the commencement of it, when beyond hope of mercy, it has by your sentence been announced to you — then it is that you will be informed, and know all that it is intended you shall know. And what is that? Not by what means those rules may, *in all cases*, be *observed*, but by what means, *in one instance*, they have been violated.

Behold then, in the King's Bench, the *royal school of decency:* a school, the discipline of which has however this to distinguish it from ordinary schools—for example, from the other royal school within view of it — viz. that whereas, in *Dr. Carey's* school, instruction comes first, and then, in case of transgression, if the transgression be wilful and perverse, perhaps correction afterwards, — stripes, say half a dozen: in *Lord Ellenborough's* school, *correction*, or, peradventure, under the name of correction, *destruction*, comes first; and it is from this correction or this destruction, that, for the first time, and without the possibility of learning it from any other source, or at any earlier period, the scholar derives the satisfaction of learning how he ought to *have* behaved himself.

§ 6. *Terror issuing from the Darkness of the Doctrines.*

If, by competent and acknowledged legislative authority, and in and by any *determinate assemblage* of *determinate words*, such as are the words of every *act of parliament*, maxims, even such as those that we have been seeing, were consigned to writing and *established* — established though it were in these very words — the very words that we have just seen — the condition of Englishmen would be a condition of security, in comparison of what it is at present.

But by no such authority, in no such determinate form of words, has this part of the rule of action as yet been, or will any part of it ever be, established and *fixed*, that Judge and Co. are able to prevent from being thus fixed.†

Under such *law* — (the abuse here made of the term *law* must be tolerated, for it is inevitable) — under such law, security may be talked of, and even fancied, but, for any man who either publishes a newspaper (not to speak of pamphlets,) or contributes to the communication of its contents, security *itself* cannot, with truth, be said to have existence. Thus much for actual *danger*.

Now as to alarm — terror — the inseparable consequence of opinion of danger, on this as on every part of the field of law, in which the legislator — dupe or accomplice of Judge and Co. — has refused to act, *fear* makes *law*, as among the heathen it made *Gods*.‡

The *Lord Chief-Justice of the King's Bench* — would he think this "*decent?* becoming? proper?" — would he "*endure*" it? Might not his "*feelings*" be "*hurt*," wounded, "violated," "prejudiced," or "injured" by

* See above, Chap. VIII. p. 99 — Speech of Mr. Justice Grose, in *The King against Beaumont.*

† When, on any part of the field of law, the security of the subject is at its *lowest*, then it is that the delight with which it is contemplated by learned eyes is at its *highest* pitch.

Accordingly libel law, such as we have been seeing it, having, in a very high place, been but t'other day brought to view, absolute perfection was declared to be among the number of its attributes. Declared? and by whom? This is of the number of those things which it may be rather more easy to learn, than safe to indicate.

The sincerity of a class of men, half whose lives are employed in the exercise of high-rewarded insincerity, has found itself now and then exposed to doubt: but here at least there need be none.

‡ Primus in orbe Deos fecit timor.

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it? Mr. *Attorney-general*—Mr. *Chancellor of the Exchequer*—the *First Lord of the Treasury*—any of the "*great characters*"—their *high situated* connexions—any one of these exalted persons, to whose ear a rumour concerning any part of the *contents*, or of the *supposed design*, of this or that passage in my projected pamphlet, should happen to have found its way, may it not happen to them, or any of them (Mr. Attorney-general excepted) to intimate as much to Mr. Attorney-general; in which case prosecution *may*, and, if prosecution, *conviction* and *perdition will*, to a *certainty*, be my doom. To publish, or not to publish? To write, or not to write? Of this sort will be the question, which, under the darkness visible at which we have been taking a glance, any man, into whose mind any such speculative, theoretical, and jacobinical conception should have entered, as that of attempting to bring to light any *abuse*, the theatre of which is to be found in any part of the system of *judicial procedure*, will of course be tormenting himself. The answer will be determined—partly by the *incidents* which *chance* has presented to his notice, partly by the strength or weakness of his *nerves*.

In this state of law, bribery excepted, among those which concern the administration of justice, exists there that enormity which a judge—I mean an English judge, one of the legislating twelve—by *committing*, or even by *confessing*, would expose himself to any the slightest danger—I do not say of *punishment*—the supposition would be too extravagant—but so much as of any expression—any the faintest expression of regret—such as majorities know so well how to frame—that it had not been otherwise? Confessing, would he obtain credence?

Not long ago comes out a *newspaper*, announcing a series of letters, to be addressed to the Lord Chief-Justice of the King's Bench:—letters, which were to have presented to his lordship's notice abuses upon abuses, the scene of which was to have been laid in his lordship's court, or in which, at any rate, practitioners in that court were to have been represented as actors. In the character of an introduction, the first of the announced letters crawls out:—no other follows it.—Whence this sudden death? That which history refuses to disclose, must be supplied by another hand. Between the first letter and the day which *should* have brought forth the second, in the hour which *should* have been that of repose, the pillow of the publisher receives a shake, the united curtains separate, and behold! at the bed's feet a grisly spectre—wrapt up in clouds of artificial hair, ill concealing the streams of gore which are seen issuing from wounded feelings. In its uplifted hands is displayed a terrific scroll, exhibiting a plan and elevation of each of the two lately consecrated abodes of sequestered penitence, with MENE TEKEL and UTRUM HORUM in flaming capitals, garnished with fragments of sentences about *contempt of government*, *high situation*, *et cætera*, and so forth, scrawled upon the walls.

After such warnings—and where is the literary pillow that is not visited by them?—suppose for argument's sake—and it is only for argument's sake—suppose Lord Ellenborough to have done any of those things which *Lord Macclesfield*, or even any of those things which, alas! *Lord Bacon* did before him—suppose him to have squeezed *clerks* as Lord Macclesfield did *masters*:—suppose him, like Lord Macclesfield, to have sold places under himself which it belonged to him to check—or (supposing it moreover unlawful)—suppose him, instead of selling them to a disadvantage, to have listened to the suggestions of a more improved economy, and pocketed the whole profit in the lump.

Suppose—but what end would there be to *such* suppositions?

In such a state of things, among those elected guardians of justice, if any such there be—to whom economy, so displayed, and on such a theatre, would appear a fitter object of *reform* than *imitation* or *confirmation*, is there any one that would *hear* of it?—is there any one that, *in print at least*, would *tell* of it? Not unless a situation in Gloucester or Dorchester jail—and that a *safe* and *permanent* one—safe as *safe-custody* could make it—permanent as a *lease for years* could make it—had become the object of his choice.

This, then, is among the *effects*—and is it not among the *uses*—not to say the *objects*—of *libel law*?

The purity of the Bench an article—a fortieth article—in the creed of Englishmen:—orthodoxy, on this ground, even where unpaid, universal. Yes: but behold the *cause* of it.

Such being the bar opposed to beneficial discovery by universal terror, suppose it broken through at all, by *whom* will it have been broken through? By the candid, the correct, the moderate? Possibly;—should haply these virtues be found at any time in company with almost unexampled fortitude. But how much more likely by the uncandid, the incorrect, the violent? Vices like these, when exemplified in the supposed libel, have they, or have they not, any such effect as that of enhancing the mischief, if any, which is liable to be produced by it? The answer is not altogether clear: but, at any rate, it is on the supposition of the affirmative, that the proportions, generally given to the intensity of invective, seem to be grounded.

But it is *truth*, not violence, that has been

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the *real* object of terror and hostility, to the creators and preservers of English *libel law:* and thus it is, that while, under the spur of indignation and desperation, violence and exaggeration burst forth, truth—gentle and simple *truth* — remains at the bottom of her *well*, without daring to peep out.

CHAPTER X.

WANT OF ADEQUATE OBSEQUIOUSNESS MORALLY IMPOSSIBLE.

§ 1. *Obsequiousness found unavoidable by a veteran Advocate.*

IN any published written discourse, taking for its subject the propriety of *public* measures, or of the conduct of *public* men, whatever merits *disapprobation*, presents an *adequate demand* for *punishment*. This principle being either expressly laid down or assumed, and juries habituated to accede to it, and *act* in conformity to it, it seems not very easy to conceive what that published discourse can be, to which, if written on any such subject as that in question, a jury, even though it were not a draught from the *select and secret qualified list*, would, on any tolerable ground of probability, be expected to refuse to attach a verdict of conviction. Yes: if so it be that, in the alleged libel that lies before them, there be not one of them that can find an expression or a word which he feels himself disposed to disapprove: *viz.* neither on any such score as *decency*, or *liberality*, or *candour*, or *propriety*, and so forth, as above: — and what if he can not? Only that in that case, for supporting a verdict of conviction, then some *other* ground must be looked out for, of which, while such doctrines as have just been seen are acceded to, whether it be possible there should be any deficiency, the reader may now judge.

If, in the event of his entertaining, in relation to any passage thus brought under his review, any such emotion as that of *disapprobation* or *dislike*, it would afford to his feelings any *gratification* to be contributory to the subjecting the delinquent to punishment, in such case, whether a juror will not find, in these established doctrines, an amply sufficient *warrant*, for the affording this gratification to the irascible part of his frame, may be seen already.

But, whether inclined or not inclined, will it be in his *power* to avoid it? — In his *power? physically* or *metaphysically* speaking, yes: — but, to keep clear of metaphysics and every thing that ends in —*ism*, *practically* speaking — whatever be the state of a juryman's inclinations, can there, for any proposed writer on *politics* or *legislation*, which is as much as to say for any proposed *libeller* — can there be any rational hope or prospect, of witnessing, on the part of any such juryman, any such forbearance?

The degree of probability in question cannot, it is evident, but be, in a high degree, influenced, even if not in one event converted into moral certainty, by the mode of address pursued by the directing judge: by the degree of *freewill* which it may please this creator to have left or not left to his habitually obedient creatures. To learn, if possible, a thing so necessary to salvation, let us open the book of *history*, that in it we may behold the words of *prophecy*, and read in it the eventual doom that is in store for us."

"No question is made," says the Lord Chief-Justice, "as to the publication itself being a libel:" — the fact is incontestable, but the *cause*, what can it have been? The inquiry is a curious one: and in the answer may be seen a confirmation of the moral impossibility of any verdict other than that of guilty at the hands of a jury of guinea-men, not to say of any men, so *directed*.

On the trial of the *other* defendant, in regard to some parts at least, if not the whole, of this multifarious libel, a "*question*" of this sort had, as we have seen, been made: made, and by the same learned gentleman, who, after having been leading counsel for the political writer, officiated now in the same character for the culprit judge. The question having been made *then*, how comes it not to be made *now?*

On that *former* occasion, the authority which the learned counsel had to contend with, was no other than that of a *single* judge: on this *present* occasion, the authority before which he has to plead, is that of the entire judica-

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"* Report of a trial at bar of the Hon. Mr. Justice Johnson, one of the justices of his Majesty's Court of Common Pleas, in Ireland, for a libel, in the Court of King's Bench, on Saturday the 23d day of November 1805. Taken in short-hand by T. Jenkins and C. Farquharson, London, 1806:" — being the same libel of the publication of which Mr. Cobbett had been convicted as above.

Extracts from the charge given to the jury (a *special one*) by Lord Ellenborough, Lord Chief-Justice:—

1. P 117. "No question is made as to the publication itself being a libel: nor indeed *could* any question be agitated upon that subject . . . . ."

2. P. 117. "There can be *no doubt in the world*, but that it is a very *gross* and *scandalous* libel . . . . ."

3 P. 117. "No question has been made with regard to its libellous tendency: if it had been raised, *you could 'not have hesitated one moment.'*"

4. P. 121. "If you believe this to be the handwriting of Judge Johnson, *you will have no question to decide*, as to the quality of the publication, but *you will find him guilty.*"

Such are the words, *as taken in short-hand*, of the Lord Chief-Justice.

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tory:—a judicatory, composed of four judges, of whom the judge in question, though in authority the *chief*, was in number no more than *one*.

"Do you maintain that a person has a right to ridicule his *neighbour* . . . . ?"

In the report given of this trial, the *words* pronounced by the noble and learned Lord Chief-Justice are *reported*, or *professed* to be reported, by the reporting scribe:—the *tone*, the *countenance*, the *deportment*, by which the interruptive interrogation was accompanied, *were not*—any of them—nor *could* they have been—included in the report.

Whatsoever was the cause—whether an acquaintance with the persons and dispositions of the guinea-men to whom the defence would have been to be addressed—a consciousness that under such *direction* obsequiousness was a virtue not confined to the jury-box—or a casual deficiency of nervous power, such as learned advocates for liberty, no less than the unlearned, are liable to—or that, even where there is nothing *dangerous*, there is something *unpleasant*, and to polished feelings, *grating*, in kicking against the pricks, and pressing against the *feelings* of official superiors, whose countenances are day by day to be encountered—so it is that there being, according to the learned counsel's own statement at least, nothing more at stake than "the liberty of the press"—that liberty which, as he had observed, "has ever been held as one of the first principles of the constitution"—nor from the doctrines, against which, on that former occasion, he had with so little fruit been contending, any worse effect to be apprehended, than the extinguishing of "that liberty for ever"—whatsoever may have been the cause of the abandonment, so it is that before this reinforced, and *de jure* at least superior, judicatory, the contest was not renewed.

§ 2. *On the part of a trained Juryman, Unobsequiousness still more hopeless.*

But, if such was the no-resistance made by a sturdy veteran,—possessing, too, in the plea of professional duty, an excuse such as might have been expected to disarm resentment, call forth sympathy, and edulcorate feelings in the bosom even of the most obdurate judge—what, under such direction, could have been or ever can be—expected, for the relief of a defendant libeller, or for the preservation of the about to be "extinguished liberty"—what, I ask, can, to any such purpose, be, with any the least colour of reason, expected, from the firmness—let us not say of the craving guinea-man, who, in one unacceptable verdict, beholds the extinction of the race of his expected guineas—but of any gentleman habituated (as by the discipline of the Blackstone school all gentlemen are habituated) to regard in every word that cometh from the mouth of one of the reverend and learned twelve, the rule of legal faith—the unerring standard of rectitude?

CHAPTER XI.

SUCH JURIES WORSE THAN NONE.

§ 1. *Star-Chamber preferable to a covertly-pensioned Jury.*

To a mixed tribunal, containing, along with the judge, a jury thus constituted, and thus directed, *two other* tribunals, each of them more simple in its composition, might, in cases of libel law, so long as libel law stands as it is at present, *viz.* without any determinate set of words for the expression of it, be substituted (it should seem) and with no inconsiderable advantage to liberty and justice.

1. One of them is—a *Star-Chamber:* in a word, the ancient judicatory of that name, revived, with or without amendments.

It was in *that* judicatory that libel law, as it stands at present, received its *form and* tenor: *viz.* in so far as *form and tenor* can be attributed to a species of law—viz. *unwritten*, alias *common*, alias *judge-made* law—of which the essential character is the not having any *tenor* at all belonging to it, nor consequently any *purport* of any such solidity as that *certainty* and *safety* can be built upon it. It was in that judicatory that the *earliest* cases extant—being those which, in the character of the foundations of libel law, are continually referred to—were determined.

Of that transcendent judicatory, the acknowledged fruit of which was "the keeping of all England in a state of quietude," pure of all fermenting matter, one great advantage was the being composed altogether of persons in "*high situations*"—"*great characters*"—whose greatness, so long as it pleased the fountain of all greatness, was placed out of all danger of failing, being fixed by office.

Though, under *special jury* law, it *does* belong to the defendant to choose, out of 48 persons fixed by a very different choice, by what 12 he shall *not* be tried, it does *not*, under any law, belong to a defendant to make choice of any of the judges by whom he *shall* be tried. But, for my part, supposing, for argument's sake, that it rested with my choice, more willingly would I be *tried*, and (being of course *convicted) sentenced*, by a Star-chamber composed of the same great characters as heretofore, than, under such direction, tried before a jury, of whom it should happen to me to know thus much and no more—*viz.* that they were *so* appointed and *so* paid:—a sentence all the while awaiting me from such a source, and of such a nature, as by the

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examples that are under everybody's view, has been rendered so intelligible.

In the case of the libel in question — the libel composed of the letters signed *Juverna* — the "*great characters*," mentioned in the title of Mr. Cobbett's trial as objects of that libel, are "the Earl of Hardwicke, Lord-Lieutenant of Ireland; Lord Redesdale, Lord High Chancellor of Ireland; Mr. Justice Osborne," (the alleged "*pourer of broadsides*") "one of the judges of the court of King's Bench in Ireland; and Mr. Marsden, under-secretary of state for Ireland."

To these may be added — as so many persons, over whose wrongs a veil had been drawn, partly by their own magnanimity, partly by that of "the Attorney-general of our present Sovereign Lord the King, who for our said Lord the King was then and there in that behalf in his proper person prosecuting," (and on such an occasion what more proper prosecuting "person could there have been?") viz. "the honourable Spencer Perceval," — "*the Hobarts*," (meaning, doubtless, the then *commonly* called Lord Hobart, now *properly* called Earl of Buckinghamshire) — "*the Westmorlands*," (meaning the then and present Earl of Westmorland) — "*the Camdens*," (meaning the then and present Earl Camden) — and the then *right honourable Henry Addington*, now Viscount Sidmouth, and in the said libel so "unbecomingly taunted" by being called by the title of his father "*Doctor Addington*."

The purpose for which this constellation of great characters is here introduced, is no other than that of saying, that it being, by the supposition, my *misfortune* to be under prosecution for a libel against all those several great characters — and at the same time my *advantage* and *privilege* to have, for my trial and sentence, the choice of a *star-chamber*, in lieu of a jury so constituted and directed as aforesaid—my choice would be in favour of the said *star-chamber:* and this, even supposing the constitution of it to have received this — I know not whether to call it *confirmation* or *amendment* — to wit, that of its being composed, in the character of *judges*, of the very same persons, neither more nor fewer, as those whom, by the hypothetical and argumentative mention thus made of their names, it may, for aught I know, at a time when *to write* is *to write libels*, have already happened to me to have libelled.

Neither caprice nor rashness dictated the choice thus made.

Judging thus openly and avowedly in their *own* cause — executing the operation of *conviction* and *punishment*, at the same *time* and with the same hands — this *apparent*, as well as *real* union of functions, at present so erroneously *supposed* to be disjoined, would be sufficient to point towards them the attention of the public eye: weak as every check must be, the action of which is to be conveyed up into so high a sphere, some check, and that a *real* one, they would have: whereas, in the existing case, while the phantasmagoric vision of a check displays itself, of the reality no signs have ever yet been visible.

§ 2. *A Jury-less Judge preferable to a coverthy pensioned Jury.*

2. The other sort of judicatory to which, in my own case, as above, in comparison with a jury so constituted and directed, I should not hesitate to give the preference, is a single-seated judicatory, consisting of a judge, without a jury: and this even without excepting the noble and learned judge, under whose direction *the jury-box*, for the reasons already so distinctly stated, would, in my mind, oppose so insuperable a *bar* to *hope*.

To those, if any such there be, to whom an object of such inconsiderable importance as the actual state of judicature, when delineated by so obscure a pen as the present, may have already presented itself to view, the considerations by which, in the character of *reasons (see Scotch Reform)* this choice is dictated, will, if not already brought to view, at any rate be sufficiently apparent—it being, *in one word*, of the nature of *responsibility* (in the *burthensome* sense of the word) to go on *diminishing ad infinitum*, in proportion as the *number* of those who are sharers in the burthen is *increased:* not that from the same learned judge, by whom the jury would, in the case supposed, be directed, and of course directed to convict me, I could, *as far as conviction goes*, entertain any rational expectation of any better fate. But, the fate of the defendant being, in the case supposed, placed so *manifestly* as well as completely in his hands, what in that case I should hope for is — some mitigation in the rigour of my sentence. Not that, by the non-existence of a jury — not that, by a circumstance so completely foreign to the consequences and tendency of the offence — any defalcation could be made from the *real* demand for punishment: but that, in some way or other, more readily felt than described, the like effect might, in some degree, be produced by prudential considerations.

"You have had a fair trial: you have been tried by a jury: by a jury composed of your equals and fellow-subjects: you have been convicted by that jury." . . . . In this strain runs regularly the eloquence, by which, when a convict is about to receive his doom, in an oration addressed in form to his *own*, but in design to other, the surrounding, *ears* (not to speak of *pens*,) intimation is given to *him*, that is, to *them*, to recognise the justice of it.

In this way it is, that the satisfaction, whatsoever it be, which it is the lot of the up-

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start "*censor*"* to afford, by his suffering, to the injured excellence of "great characters" placed in "high situations," is enjoyed without abatement: while, of any dissatisfaction that may chance to be raised by it, a portion, more or less considerable, is turned aside upon the *jury-box*, the inhabitants of which find, in the constitutional darkness in which their operations have been involved, an effectual protection against all assaults to which visible objects stand exposed.

Were it my lot to be tried for a libel — a lot that may fall to me at any time, as well as to every other man in the country, who can either write or read, and whose endeavour is to afford, in any shape, he being not a man of *family*, "*instruction to mankind*," — I had rather, a hundred times over, be tried by Lord Ellenborough, sitting alone in his proper place, whatever it might be — the King's Bench, the Star-chamber, or the Privy-chamber — by Lord Ellenborough without a jury — than by a jury trained under the direction of, as well as directed by, Lord Ellenborough. By tears, by prostrations, by a certain quantity of dust licked up, by intercession of friends, by vows of good behaviour, and other et cæteras of penitence and humiliation, it might *then* happen to a man to find "*feelings*," where feelings, other than those which are but springs of vengeance, are not *now* to be found, and where, except of that sort, the printers of *The Independent Whig* found none.

But suppose me prosecuted, and, before such a jury, of course convicted, what would be then the language: "Fool," or "weakest man that walks over earth without a keeper — what would you have? You have been tried by a jury of your country: you have been convicted. There! go and write libels, if you can do it within four walls, without communication from without, in the well-ordered jail of Gloucester, for six years: for three, as is proved by your transgression after the examples you have had before you, are not sufficient." Who, in a word, who had to stand fire from an adversary, would not rather have the adversary *before* a screen than *behind* one?

* Conclude we now with the catechism — the *Perceval* catechism — already glanced at.

"Gentlemen (p. 839,) who is Mr. Cobbett? Is he *a man of family* in this country? ..... *Quis homo hic est? Quo patre natus?* He seems to imagine himself a species of *censor*, who, elevated to the solemn seat of judgment, is to deal about his decisions for the instruction of mankind."— Speech of the Hon. Spencer Perceval, in his character of Attorney-general, leading counsel for the prosecution, in the trial of Mr. Cobbett, as above.

Who Mr. Cobbett *is* — was to this *man of family* a matter, even at that time, not altogether unknown, and is somewhat better known at present. What he is *not* is — one who having secured to himself some £12,000 or £13,000 a-year of the substance of the people — raised, *not* by taxes, but by means, in comparison of which the most *oppressive* of taxes would be a *relief* — has made it as completely his *interest*, as this prosecution, with the doctrines which it afforded occasion to promulgate, have proved it to be his *endeavour*, to contribute what may be in his *power*, towards destroying whatsoever remains undestroyed of the liberty of the press.

Quis homo hic est? Quo patre natus? So long as the name of this man of family is remembered, this latinity brought forward on such an occasion, — ought never to be forgotten. Two casts of men in this country: *men of family*, to whom, in case of delinquency, *impunity* is due: men of *no* family, to whom, in the like case, *punishment* is due. One cast, who have a right *to plunder*: another cast, who have a right to *be plundered*, and to be *punished* if they *complain* of it.

Was it not by the original edition of this catechism, more than by anything else, that the French Revolution, with its horrors, was produced?

And here we see one use of a *special* and *well-selected* jury: men ennobled by the "*Esquire*" tacked by the constable to their names. With a pedigree reaching down, though it were from *Woden*, is it possible that the united force of pride and vanity should so completely have got the better of common prudence, as to represent the question *guilty or not guilty*, as turning upon the question *family or no family*, had it been to a jury of the *original*, the *constitutional*, the *ungarbled*, the *uncorrupted* stamp? Did ever man think to better his cause, by "*violating*," in this or any other way, the "*feelings*" of his judge?

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PART II.

STATE OF THE PACKING SYSTEM, ANNO 1808.

CHAPTER I.

INTRODUCTION — TWO REFORMING SHRIEVALTIES.

§ 1. *Turner and Skinner, anno* 1783–4.

In the year 1784, *Sir Barnard Turner*, and *Mr. Thomas Skinner (See City Characters,)* the late celebrated auctioneer, afterwards alderman of London, finding themselves *Sheriffs of London* and *Middlesex*, charged as such with *duties* of no inconsiderable importance, conceived what to many grave and learned persons of that time, "friends to social order and our holy religion," was looked upon of course as a theoretic and speculative fancy; *viz.* that of making things "*better than well*," by applying their minds to the fulfilment of those same *duties*. The state of things appertaining to that department having presented itself to their eyes as being in divers particulars susceptible of improvement, they made in that view what arrangements had occurred to them as being in their own power, and in a tract of forty 8vo pages*—gave an account of what they had done themselves, together with a statement of such other things as, if done by others, presented, in their view of the matter, a prospect of being of use.

In addition to some regulations, partly executed, partly recommended, having for their objects the *health* and *good behaviour* of prisoners, the changes thus spoken of under the name of "*alterations and amendments*," consisted of three innovations—one respecting the disposal of *goods* taken in execution in civil actions, the two others respecting the *place* and *mode* of putting criminals to *death*.

1. On their entrance into the shrievalty, they had found lodged, by customary negligence, in the hands of the sheriffs' officers—a class of men, whose hearts are universally recognised as standing, in a peculiar degree, exposed to the inroads of hard-heartedness and corruption—the function of nominating persons, at whose disposal, in the name and character of *appraisers*, *goods* taken in *execution* were regularly placed by these their patrons: and of the general result of this arrangement a tolerably adequate conception may be formed from *one* individual case, in which, according to the report given of it by these sheriffs, the value of the property so taken, being about *five* times the amount of the debt, and the whole having been taken from the debtor, no more than a *tithe* of it, *viz. half* the amount of the debt, had found its way into the pocket of the creditor; the other nine-tenths having, in some regular and established, but unascertained or at least undivulged proportions, been shared between the minister of justice, and his official nominee and associate above mentioned.

To this grievance the remedy they applied was one which, though in principle, and in the character of a regularly-established remedy, applicable by all persons on all occasions not altogether an unexceptionable one, proved, in the individual hands in question, there is reason to think, a beneficial one: the nomination which they had found, as above, in the hands of their officers, was taken out of those low-stationed and impure hands, into their own: and forasmuch as in that station men are not only too highly and conspicuously elevated, but moreover too frequently changed, to be much in danger of engaging with success in the organization of any regular plan for the extraction of lucre from so impure a source, the mischief, if not altogether eradicated, must naturally have been considerably diminished.

On what footing the matter stands at present, it has not fallen into my way to learn. At that time, as the evil genius of the discarded functionaries would have it, both sheriffs were *upright* as well as public-spirited men: and *Skinner*, being, in relation to the branch of business in question, in a pre-eminent degree an *intelligent* one, knew where to find his *like*.

At present, the magnificent edifice, now erecting in the centre of the city under the name of the *Auction* Mart, presents the idea of a more radical cure.

2. On the ground of capital punishment, the *place* and *mode* of execution furnished to these reformers two other opportunities for casting their honest mite into the treasury of justice.

On those melancholy occasions, on which to save the trouble of reforming them, and adjusting punishment in quality as well as quantity to delinquency, malefactors of the

* The title of it is—"An Account of some Alterations and Amendments attempted in the Duty and Office of *Sheriff* of the County of *Middlesex* and Sheriffs of the City of *London*, during the Sheriffalty of *Sir Barnard Turner*, and *Thomas Skinner*, *Esq.*—London: Printed by Stephen Clark, No. 15. Brokers Row, Moorfields, 1784." No bookseller's name.

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most diversified descriptions are involved in one indiscriminating destruction, the operation was in those days regularly preceded (it seems not easy to say why) by a procession of two or three miles length, in the course of which, whatever effect could have been expected from the concluding tragedy was more than countervailed by the intervening disorders. Struck with the incongruity of this surplusage of locomotion, our reformers fixed the ceremony to the well-assorted spot to which it remains attached at present: a spot immediately contiguous to the place of confinement from which the victims then used to be, as they still are, taken for the appointed sacrifice.

At that same time, the fatal operation being performed, as mechanicians say, *by hand*, was performed in that coarse and uncertain manner, by which the sufferings of the patients were exposed to receive unintentional increase. It was to this happily associated pair of humble and unambitious reformers, that the machinery, now applied to that purpose, and still known by the almost burlesque but sole existing name of the *New Drop*, owed its establishment. Under English justice, the intended object, as well as effect of it, corresponds exactly with that of the *guillotine*, under the anarchical tyranny of revolutionary France. For, in the design of the humane, as well as scientific, inventor, whose name it has perpetuated, that instrument (a *French* edition of our *Halifax Maiden*) had no other object than that of diminishing, in each instance, the *suffering* produced by those executions, the *multitude* of which depended on other hands.

To any one who has been accustomed to observe how slow, in every department of government, from the highest down to the lowest, the pace of reform is, and how thickly beset with obstacles the paths which it has to traverse, it may be apt to appear difficult to conceive by what strange accident, even in so low a sphere, a change, which had for its result, as well as for its object, the good of the many, should have been suffered to take effect.

As to the innovation which consisted in the disturbance given to the official arrangement, by which so quiet and regular a division had been made of the property of the debtor between the officer and the appraiser — in the fact of its having been suffered to take effect, and that too without opposition from above, he may behold a certain proof of two things: *viz.* 1. That there was no individual existing in any such station as that of a judge or other considerable law-officer, into whose hands so much as a single penny of the profit that used to be thus extracted, was ever felt to have found its way; and that, in particular, if in the disposal of any of the property in question, any *errors* were ever committed by any one of these inferior ministers of justice, no Chief-Justice of the King's Bench had ever considered himself as having gained, or conceived himself as being in a way to gain, to the amount of £1434 : 15 : 6 a-year, or any part of that sum, nor any Chief-Justice of the Common Pleas, £733 : 3 : 11 a-year, or any part of that sum, nor any attorney-general *that* or any other sum by contributing to the manufacture, or effecting or permitting the correction of any of these errors: 2. That neither did there exist among any of those exalted personages, any individual whose pride had found itself by any accident engaged in the protection of the abuses or inconveniences thus removed.

3. As to the procession from Newgate to Tyburn, the thieves, whose practice found itself diminished by the abolition of this ceremony — these unlicenced depredators — not one of whom ever had or ever would have found any difficulty, other than from want of money, in his endeavours to purchase a toss-up for impunity on pretence of some error, bearing no more rational relation to his case than to that of the *first homicide* — found themselves unable in their conjunct capacity to make any such case as on the ground of precedent would, in point of decency, have warranted any gentleman of the long robe, in the character of judge, counsel, or member of parliament, to stand up in support of it.

4. As to the *new drop*, the dying agonies of the patients destined to be relieved by it, not having found, in a long robe or in any high situation, any person possessing any such interest in their continuance, as is possessed by such a multitude of personages in high situations and long robes, in the continuance of the living agonies of so many thousands who are kept so regularly immured in forced idleness, by their authority and for the sake of their profit and their ease, and the only persons whose co-operation towards this reform was necessary, being the *surveyor* and the *carpenter*, whose sensibility to the advantages of it was beyond dispute, thus it was that *this* reform too found its way into existence unopposed.

In a word, barring opposition from superior power, accomplishment being within the power of the reformers themselves, and no interest intervening in any tangible shape to call down opposition from above, the reforms, such as they were, were carried into effect.

By these circumstances, when rightly considered and put together, the known facts of the case may be found to stand divested of that air of fable, by which, to a first glance, they may have seemed obscured.

§ 2. *Phillips and x. Anno* 1807-8.

From that year (1784) to 1807, nature took

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time to rest herself: and, in all those three-and-twenty years, though of *abuse*, in a considerable variety of shapes, there could not, during any part of that time, have been any deficiency, it appears not that in the series of worthy and respectable gentlemen, who succeeded each other in that office, there had been so much as *one*, to whom the idea had occurred, of occupying himself in any such *theoretic* and *speculative* task, as the attempting to make any defalcation from the mass: no—not a thought about any such matter, in the breast of any one of the units in so many pairs of functionaries, any more than if, instead of paying his £2000 or £3000 for the privilege of discharging the functions of his office, he had, like a pair of *Honourable Knoxes*, received his £10,023 a-year; or like an *Earl of Buckinghamshire*, his £11,094, or like a pair of *Lord Seymours*, his £12,511, or like a pair of *Percevals* (one behind the other) his £38,574 ("*subject*" alas! to "*deduction*,") for the trouble of bearing the official *title* of it: *practice* not being, in any part of all this time, in any degree, or by any body, neglected—*practice*, to wit in *essentials*, such as going to court, riding about in a gilt chariot, giving and eating dinners, and the like.

Africa, in times of old, had the reputation of producing such singularities as could be exhibited on four legs. In modern times, England has among nations been noted for producing singularities on half the number of legs.

In the shrievalty year 1807-8, the spirit of reform having passed, as hath been seen, three-and-twenty years of repose on the pillows, or in the graves, of Sir Barnard and Mr. Skinner, made its appearance, in the character of a *giant refreshed*, in the body of Mr. Phillips, a publishing bookseller of the first eminence, who, on receiving from his Majesty's sword the customary honour, changed his appellation into that of Sir Richard Phillips.

In the nature of the shrievalty there is a sort of *mystery*, in consequence of which he, who does not look well to his words, and even he who does, will be in continual danger of falling into one or other of two *heresies*, which, like *Scylla* and *Charybdis*, lie in wait for him, one on the side of *grammar*, the other on the side of *legal* and *curious learning*. In London and Middlesex, taken together, there is never *one sheriff* only; there are always *two sheriffs*. The same two respectable gentlemen who, in the city of London, constitute two sheriffs, and thereby two persons, constitute, in the county of Middlesex, but *one sheriff*, and thereby, in legal abracadabra, like man and wife, but *one person*;—or else *vice versâ*;—for, such is the frailty of unlearned memory, that as often as, in relation to this article, *one* minute finds me in possession of orthodoxical truth, the *next* minute finds me dispossessed of it.

In the artificial and involuntary fraternity contracted by him on this occasion, it was not the lot of Sir Richard to find any such felicity as that which had attended Sir Barnard and Mr. Skinner.

Bishop Burnet—or, if not he, some other self-reported eye-witness, whose name, if found, would not, to the *present* purpose, add much to the stock of our useful knowledge, tells us of a pair of *twins* whom he saw living in Holland, and whose misfortune it was to stand connected by bonds of fraternity closer by much than either of them wished; viz. by an adhesion of some sort or other, in the region of the back-bone, constituting thence, instead of *two bipeds*, *one* unfortunate *quadruped*.

At the age of about twenty, one person of this unhappily-connected pair paid the debt of nature. The condition of the survivor is too deplorable to be dwelt on anywhere, especially in this place. All that is here wanted of him is to serve as a type of one-half of our quadruped, or double biped *sheriff*.

In his pilgrimage through the thorny region of reform, Sir Richard was not long ere he found himself in the disastrous plight above alluded to. Into the body of his twin colleague, Mr. *x*, either the beneficent spirit above spoken of had never made its entrance, or had soon made its retreat, leaving it in the condition of a carcase, which, if not *dead* in *law*, was dead to the purpose of rendering, in any degree, less pernicious the condition of the law. At every step he took, our knight found himself with this everlasting colleague at his back, exhibiting, in no other form than that of the *vis inertiæ*, except now and then a kick or two, any signs of life.

As to Mr. *x*, I borrow, on this occasion for his use, one of the names employed by mathematicians for the designation of their *unknown quantities*, not thinking it necessary to him to possess any other introduction to "*Prince Posterity*" than what he has secured to himself by his own picture, as drawn by himself and published by Sir Richard, in that work of his, of which mention has been already made.

As to Sir Richard—what things he did—what other things he *tried* to do, and would have done, but for the *giants* and *dragons* he had to encounter in his way—all the while with this mass of proud flesh at his back—matters of that sort belong not exactly to this place: any more than the sort of requital he met with, in another character (see p. 111,) from a pair of learned brethren, whom he found so much more perfect in the art of "dwelling together in unity," than *he* and *his*.

Of the list of his achievements and less successful endeavours, one alone belongs, by any direct title at least, to this history; viz. the discovery, made by him, of the pitch of perfection, at which the *art of packing* (that master art of which the elements have been

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endeavoured to be delivered as above,) has been carried in the application made of it to *special juries*.

Beholding in the *Court of Exchequer*, as above, the great manufactory or workshop, in which it was carried on, and seeing more to admire in the *ingenuity* displayed in it, than in the *purposes* to which he saw it applied, he addressed a letter to the *chief conductor* of that important branch of business, noticing the state of the art, together with such observations as had been suggested by it.

At this time he was either *charitable* enough to *suppose* — or, (what seems the more probable interpretation of the two) *decorous* enough to *seem to suppose*, that the mode in which the business was conducted was a secret to the pre-eminently learned as well as skilful person, under whose auspices and authority he found it going on. But, if such was ever *really* his belief, it was not long before he found himself obliged to take his leave of it.

CHAPTER II.

THE SHERIFF TO THE LORD CHIEF BARON — NOTICES.

§ 1. *Substance of the Letter.*

FEW, simple, and important, will be seen to be the statements made by this sheriff to the Lord Chief Baron. After the substance of each statement, follows an intimation of the sort of answer given to it.

1. That in the judicatory, over which the Lord Chief Baron presides, juries are become virtually permanent: and that the Lord Chief Baron knows they are. Of this state of things the Lord Chief Baron *admits* the existence; and moreover, as will be seen, *justifies* it. — Say, *admitted and justified.*

2. That this permanence is contrary to an acknowledged principle of the constitution, and considered by the public as such. — *Not denied.*

3. That it is contrary to the express provision of an act of Parliament [4 Geo II. c. 7, § 2.] — *Not denied.*

4. That the permanence has *packing* for its cause.

N. B. The word *packing* not employed: but the modes of operation indicated, and certain official persons indicated as operators. — *Not denied.*

5. That of the interference of the solicitor *on one side*, viz. the solicitor for the crown, a selection, chargeable with *partiality*, is the *habitual* result. — *Not denied.*

Partly by a regard to decorum, partly by the want of that experience which was yet to come, the sheriff was betrayed into two other assertions which proved erroneous.

6. One was — that this permanence had not among the number of its *causes*, on the part of the learned judge whom he was addressing, either *direction* or *connivance*. This was in April 1808. But in September following, we shall see him relating facts, by which, on the part of the judge, *connivance* was rendered *certain*, and *direction* (the system of *permanence* being in the judge's answer openly defended) *little short of it*.

7. The other was — that among the causes was either *negligence* or *indifference*, on the part of the official persons by whom the jurors are fixed upon: — which persons, as the Lord Chief Baron could not but know, though the sheriff does not state who they were, were officers acting under the authority of the learned judge. But of this breach, not only of *constitutional principle*, but, as virtually admitted, of *positive law*, neither *negligence* nor *indifference* had been the cause. And the proof of its not having had either for its cause, is given by the sheriff himself a little further on. For, on receipt of a *remonstrance* made by him, we shall see the master packer giving up for the moment the supposed illegal practice, but afterwards resuming it.

§ 2. *The Letter in its own words — with Observations.*

Here follows the letter in its own words. *Phillips*, p. 166.

"TO THE LORD CHIEF BARON.

"MY LORD, — In obtruding upon your Lordship, on a question which has arisen in the exercise of the high office which I have the honour to fill, and which appertains, in an important degree, to the practice of the court over which your Lordship so honourably presides, I am emboldened by that urbanity and liberality, which I have discovered to be the leading and actuating traits of your personal character.

"*Your Lordship is* doubtless *aware*, that *the public have viewed with peculiar interest, for many years past*, the manner in which *special juries* are brought together, and particularly the circumstance that *they* have consisted, with little variation, of *nearly the same individuals in every cause, for terms and years together.**

* *For terms and years together.*] Here we see the *notice* given of the *permanence*.

The fact *stated* by the *sheriff*, and *admitted* and *justified* (as we shall see) by the *Lord Chief Baron*, is — not merely that in the special juries serving in his Lordship's court, there have been, out of the twelve, an *individual*, or a few individuals, in whose instance this permanence has had place: — but that it is the *whole body* of special jurymen that, for the indefinitely long number of years in question, has been in this state of permanence.

In the composition, given in each instance, to the jury taken from this permanent body of jurors, *some* variation, though that but a "*little variation*," is *admitted* by the *sheriff*: but, sub-

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"In causes between individuals, this is a matter of minor consequence; but *in causes between the crown and the subject*, your Lordship will readily conceive, that *it is a practice viewed with jealousy*, and *does not accord with* those *other features of our jurisprudence* which are so much admired at home and abroad.

"The evil is *not* attributable to the *connivance* or *direction* of *the judges*,* nor to any defect in the law; *but it arises* solely, as I am told, *from the negligence* or *indifference*† with which the juries are struck *by the proper officers*, and from the *interference*, in certain cases, *of the solicitors for the crown*.‡

ject to this limitation, the non-variation is *admitted* by the *Lord Chief Baron*.

Of the difference between the several distinguishable lists, *seven* or thereabouts in number, that have place in the case of special jurors, an *explanation* has been given above. [Part I. Ch. IV. § 4.] Of the "little" *variation* in question, what, in the language of *that explanation*, is the result? Only that, to make allowance for casual non-attendance, and at the same time provide for general convenience (the convenience to wit of all persons who belong to any of those classes whose convenience is considered as entitled to regard, —*i. e.* all persons concerned but the suitors,) the *select and secret qualified list* is constantly larger than any actually *serving list*: in a word, that it contains some number above *twelve*: or, lest the arrangement should ever find itself disturbed by the intervention of casual interlopers, if put upon the *reduced* list, say four-and-twenty.

This *select and secret qualified list* is, to such actually *serving list*, what, in the East India direction the list composed of the directors actually in the direction at any given point of time, with the addition of all who ever have been in the direction, is to the list composed of the actual directors alone: with only this difference, *viz.* that the exclusion of supernumeraries, which, in the case of the *East India direction*, is determined by *rotation*, (subject to a prolongation of the exclusion in the instance of this or that individual, in so rare an event as a determination taken to that effect by a majority of proprietors,) is, in the case of the *guinea board*, determined partly perhaps by seniority upon the list, but partly, at any rate, by chance, as well as partly by choice.

Rendering the *select and secret list* no larger than the serving list, is an arrangement that stood prohibited by divers considerations:—

1. It would have rendered the *duty too severe!* it would have converted the *bonus* into a *burthen* —in the instance of every such member of the *corps*, with whose business or amusements such regular and unremitted attendance would not have suited: and it would thereby have excluded this or that useful member in whose instance the requisite obsequiousness, so often as it suited him to attend, might be depended upon.

2. The *imposition* would, in this form, have been *too barefaced*:—twelve persons, under the name of *jurymen*, sitting at all times without any variation, and thus forming a board no less *manifestly* permanent and unchanging than that of the *twelve judges*, could never have passed thus long under the name of a *jury*: no, not even under the habitual blindness, almost universally manifested to every the most flagrant abuse, which, having *judges* for its authors, is screened from scrutiny by the name of *law*.

* *Connivance or direction of the judges.*]—This, as already intimated, turns out to be a complete mis-statement: though, as already intimated, a very pardonable one. Attributable —not to the "*direction*" of the judges?—just possible;—not to their "*connivance?*"—*not* possible.

The state of things here in question is that very state of things the existence of which (it has so often been observed) is not only *admitted* but *justified* by the chief judge, to whom that letter is addressed. That it had his ingenuity and industry for its efficient cause is *not* certain: but that its existence was known to him *is* certain: since, in declaring his approbation of it, he grounds that approbation on an experience of as long a standing as his own existence in the character of a public functionary.

Of such *connivance* does the existence require confirmation? *Require*, surely not: but confirmation, if a fact so firmly established can be rendered firmer, we shall find it receiving further on; *viz.* where the permanent system having, at the instance of this *sheriff*, been for the moment *broken in upon*, by the most fully employed of the Lord Chief Baron's two *master packers*, was *restored* as soon as the *sheriff's* back was turned.

† *Negligence or indifference in the proper officers.*] Another mis-statement; but alike pardonable. By the chief judge, to whose authority the master packer is subject, the system having been, according to the judge's own declaration, contemplated by him during a period of twenty-four years, and at the end of that term openly defended, whether, on the part of this subordinate, the acting up to this system could have been the result of "*negligence*," or altogether matter of "*indifference*," might be left to any one to pronounce. But whatsoever might, at the time of this letter, *viz.* 4th April 1808, have been the state of the official mind in question, that it was not long before a state altogether *opposite* to that of *indifference* had place, is demonstrated by the fact just spoken of, *viz.* the restoration of this state of things, so shortly after the day when, at the instance of the author of this letter, it had been suspended.

‡ *The solicitor* (of the crown) *is permitted to interpose.*] In relation to the incident here spoken of, I suspect some want of clearness, if not of correctness, in the information, on which this part of the statement, thus made by the sheriff, was grounded:—

1. Not only in *this*, but in all the other *packing offices* (according to the practice, as stated in all the books,[a]) the solicitor, as well on *this* side

[a] 1. For the King's Bench, civil office, see *Tidd* and *Crompton* by *Sellon*.

2. For the King's Bench, crown office, see *Hands*.

3. For the Common Pleas, master packers, the two prothonotaries.

4. For the Exchequer, plea office, master packer, the clerk of the pleas—see *Edmunds*.

5. For the Exchequer, remembrancer's office, master packer, the deputy remembrancer, there is no book of practice as yet extant: but that in the respect in question, the practice of this office agrees with that of the four other offices, may be well inferred by analogy, and is in substance affirmed, as will presently appear by the learned gentleman who dates from Lincoln's Inn.

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The freeholder's list is full, and tolerably perfect; but in calling over the names, the *solicitor* is permitted to interpose, and *to say who will and will not attend:* so that instead

as on the *other*, has, to *one* purpose, a *right* — an acknowledged *right* — to *interpose; viz.* to the purpose of striking out his *twelve*, out of the forty-eight members of the *gross occasional list*, regularly nominated by the master packer.

2. This interposition of his — this interposition, considered by the sheriff, and by him denounced to the Lord Chief Baron, as a cause of *partiality* in the selection, at what *stage* of the process is it considered as taking place? At the time regularly appointed for mutual defalcation, if, by the exclusion of *twelve* out of the *forty-eight*, any apprehension, entertained by this solicitor, of a deficiency in the article of *obsequiousness*, would be satisfied, in such case all conversation, whether to the effect here spoken of, or to any other, is needless or superfluous.

3. That, the whole of this *gross list* being at the nomination of the master packer, any real danger of non-obsequiousness towards the crown side should *exist*, except in the extraordinary case of corruption successfully applied by the *individual*, the *defendant*, has been over and over again shown to be a state of things altogether improbable: that in that state of things any such danger should be so much as *apprehended*, seems not very probable. To what *end*, then, any such *indirect* and *mendacious* interference?

At what point of *time?* Antecedently to the declaration and production made of the *gross occasional list* — made, in form and ceremony, by the master packer (or his clerk) at the very time when, by the defalcation of 24, *viz.* 12 on each side, the number on that gross occasional list has just been brought down to the 24 on the *reduced* list? or not till *after* that time?

1. If antecedently, it would suppose, between the master packer, and the solicitor of the crown (the solicitor of the customs, for example, or the solicitor of the excise,) a perfect and collusive understanding: yet, at the same time, on the part of the solicitor, a fraudulent sort of language, such as would by that collusion have been rendered unnecessary. And moreover, this conversation being carried on secretly and collusively, between these *two*, at a *private* meeting, the solicitor on the other side *not* being present, how should it *transpire?* and not once only by accident, but, as here represented, *habitually* transpire?

2. The *time* at which insinuations of the sort in question have been made, suppose it now to have been the very time of the *regular* and tripartite meeting between the two opposite solicitors and the master packer, at his office. On *this* occasion, if from such insinuations any advantage could possibly be gained to the crown side, the case must be, that after the selection constantly made of the 48 by the master packer — all 48 being persons who cannot but have been put in for the purpose of affording and having an *actually serving* list, composed of persons who, "*with little variation*," are in constant exercise — and therefore selected for the very purpose of producing that result, which, by the admission made by the Chief Baron, is proved to be actually and constantly produced — the case, I say, must be, that after a selection thus made, the faculty of striking out twelve names — twelve names out of a list *so* formed — has frequently, by the crown solicitor, been regarded as not yet sufficient for his purpose: and on this supposition, and this supposition alone, it is, that, in addition to the 12 *duly* put aside by him in the exercise of his right, some number of *others* have required to be *unduly* put aside, by means of the *fraudulent* insinuations here above supposed and mentioned.

This being the object, how then, at the time now in question, *viz.* that of the regular meeting, is it to be accomplished? Probability seems to be already out of the question: as to possibility there seems to be but one mode so much as *possible*, and that is *this:* — The list of 48 being produced by the master packer to the two solicitors, the crown solicitor takes it up and says — "This man" (speaking of A) "will not attend: should his name remain upon the reduced and summoned list? Putting him on this gross list is therefore of no use: out with him, then; and, to make up the 48, let us have somebody else." This, speaking of A; and so on in regard to B, C, D, &c. whatever may be the number of those whom, on this supposition, it appears to him advisable to endeavour in this way to get rid of.

But while, by means of this insidious *language*, this fraudulent *practice* is carrying on — the *defendant's* solicitor — what is *he* about all this while? "If this man, as you think, will not attend, then strike him out: or if you insist that the whole number to which your power of striking out extends shall remain to you undiminished, let *me* strike him out." Such would, naturally — and, morally speaking, necessarily — be the language of the defendant's solicitor, unless *he* too were in the league against his client's interests and rights.

It is, I say, *before* the commencement of the operation of mutual erasure, that, at that tripartite meeting, any such conversation, if at all, must have been held: — for, *after* that operation, the 48 being, by the striking out of 12 on each side, reduced to the 24, with what colour of reason or honesty could the crown solicitor require — and on no other pretence than that of expected non-attendance — require, that A, and B, and so on, should be struck out of this *reduced* list?

"Why then did you leave his name in?" exclaims immediately the defendant's solicitor: "and to what purpose strike it out now? Suppose his name left in; and therefore suppose him *not to attend:* where is the inconvenience? there remain still 23 others: and, if there were a hundred, 12 of them are as many as can serve. But if *this* man be NOW STRUCK OUT, ANOTHER man must NOW BE PUT IN: and, if another be NOW put in, *I* must have the option of striking him out, just as I should have had, had his name stood among the original 48."

On this supposition, then, a *serving list of* 12, "*composed with little variation of the same persons*," must have been the result of a gross list of 48, such as, though constantly formed by the master packer, to whom every one of their characters and habits of acting is by long experience so perfectly known, is notwithstanding so oddly constituted, that by striking out of the number any twelve that he pleases, the crown solicitor cannot yet, without increasing the discarded number by insidious practices, get such a jury as will be fit for his purpose. But instead of a constant good understanding between these two servants of the crown, this would suppose a constant conflict: — on the part of the master packer, dispo-

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of the names being *indifferently taken and dictated by the officer of the court,** *and the attendance of those persons* being *compelled* by the exaction of severe penalties, the juries are chiefly composed of those who, it is loosely stated, will attend; and these are frequently *the same persons, jury after jury, and term after term.*

"Your Lordship will perceive, from the inclosed *letter*† of Mr. * * *, that the sheriffs have had some difficulty in their minds on the subject of *summoning* persons thus returned; considering as they do, that the clause of the 4th Geo. II. applies equally to *special* and common *juries.* Yet as the correction of the evil is their object as public officers, rather than any contention with the officer of the court, I have felt it more respectful at once frankly to submit the whole matter to your Lordship, in the hope that it may tend to place everything on its proper footing in the pleasantest manner.

"I beg at the same time to have it distinctly understood by your Lordship, that in making this statement, and in writing the observations contained in this note, I have had no design to implicate the conduct of any individual; and that, in stating the general facts, my only object has been to justify the application which I have in this manner felt it my duty to make.

"I entreat of your Lordship to believe me, with every sentiment of respect, yours, &c. &c. &c. "R. PHILLIPS."

Bridge Street, April 4, 1808.

CHAPTER III.

LORD CHIEF BARON TO SHERIFF SIR RICHARD PHILLIPS — AVOWRIES AND DEFENCES.

§ 1. *Substance of the Letter.*

FOUR days after the sheriff's letter, viz. on the 9th of April 1808, comes, from the Lord Chief Baron to the sheriff, an answer, of the general complexion of which an intimation has been given, as above.—I. Admitted and

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sition to thwart, on every occasion, the purposes of the crown solicitor; which object, after all, notwithstanding the existence of a power adequate to the effect, viz. the power of choosing the whole 48, is, according to all the evidence in the case, never compassed on any occasion.

Supposing, therefore (which I see no reason for not doing,) supposing such conversations to have *really* passed as the information given to the sheriff states to have passed, I cannot but conclude them to have been perfectly *innocent:* and that for this simple reason, that no point could be expected to be gained by them were they otherwise.

To what circumstance, then, attribute the mention thus made of them by the sheriff in this letter of his to the Lord Chief Baron? Evidently enough to this, viz. that the conception he had been led to form of the mischief fell thus far short of its real magnitude: the *packing*, which by the information he had received had been presented in the character of an *irregular*, and thence easily corrigible *abuse*, was, in truth, the result of *regular* and inveterate, and thence, unless by extraordinary measures, not corrigible, *practice.*

But under charges such as these, the curious circumstance is the silence of the judge. "A judicial officer under your dependence is habitually in league," says the sheriff, "with the solicitor on one side; and, being so in league with him, leagued with him in a CONSPIRACY against justice, permits him to set aside jurors, till he has got a jury to his mind." "Well," says the judge, says, I mean, by his silence—"well," says the judge, "and if he does, what do *I* care?" nor yet merely by his silence; for with all this before him, we shall see him pronouncing it in express terms, and without exception or distinction, to be "*well;*" departure from it, *better than well;* meaning the opposite to *well.* Accordingly, in the course of the letter which we shall come to presently, we shall find his lordship speaking of certain results, which, being by his lordship regarded as beneficial, reconcile him most perfectly to the means, whatsoever they may be, by which they are effected: yes, whatsoever they may be; and although this collusion, partiality, and conspiracy against justice, had thus been alleged to be of the number.

All this while the statement was, to his lordship's knowledge, in many points, incorrect. Why then bestow upon it this virtual admission? Because the *real* state of the practice was so much worse than the state thus ascribed to it. The *assumed root* ascribed to the corruption was nothing worse than casual *irregularity;* nor could the cause so assigned have been adequate to the production of the effect:—whereas the *true root* was, and is to be, found in *regular* and *established* practice: and that practice so ordered as to render the corruption *sure:* the nomination completely, as well as constantly and avowedly, made by an officer in the dependence of the judge. Observing the hound to be upon a wrong scent, the fox sat quiet while the enemy pursued his course.

* *Indifferently taken, and dictated by the officer of the court.*] Consistently with the result, known to be produced—that result, to wit, the production of which is, as above, admitted and defended by the chief judge, viz. the "*little variation,*" and in effect the *not much less than identity* of the *actually serving* list, and thence the *perfect identity* of the *select and secret* list, the correct application of any such term as *indifference* does not, in *any* sense, appear practicable. Let it even be supposed that no crown solicitor ever takes any part in the business other than what the solicitor on the other side takes, here is still a *package* as completely effected by the master packer *alone,* as it could be by a legion of crown solicitors;—the jury—that body, the only supposed use of which is to serve as a check upon the judge, named on every occasion by the dependent of the judge.

† *The inclosed letter.*] viz. the letter of the learned gentleman who dates from the Temple; whose "*observations*"—being, as we shall see, and without exception, pronounced by the Lord Chief Baron to be "*perfectly just*"—are, by that confirmation, adopted, and rendered part and parcel of his *Lordship's* observations.

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justified, the *permanence*. II. Not denied — 1. That it is *unconstitutional*; 2. That it is contrary to act of parliament; 3. That the mode in which it is effected is by officers in his lordship's dependence, in collusion with the solicitor on one side.

None of all these phenomena coming, in his lordship's conception, under the notion of "*inconvenience*," he declares — and on the authority of his own "*long*" experience — that not "*the least inconvenience*" has, from the practice in question, ever "*arisen during all that time*."

On the other hand, to the restoring special juries to that state of independence in which they are, by the constitution, intended, and, in fact, supposed to be, he opposes two decided objections. These may be comprised under the following heads: —

1. *Increase of vexation* — viz. eventual vexation to persons liable to be called upon to serve in the capacity of special jurors: vexation, a mischief the avoidance of which constitutes, it must be confessed, one of the *collateral ends of justice*.

2. *Danger to justice* — viz. to the *main* and *direct ends of justice* — by the prejudice that may result to one side of the cause or the other, as it may happen: to wit, by a partial loss of a species of "*instruction*," which, in the class of causes in question, he represents the jurors to stand in need of, to make them do justice.

Theoretical classifications, such as the above, are looked down upon of course with sublime disdain by the almighty creators and arbiters of *practice*. But being my duty, it is my endeavour, to place his lordship's arguments in what appears to me the clearest as well as strongest light of which they are susceptible.

Of these supposed *inconveniences*, such is the force with which the consideration operates on his mind, that he concludes with using his influence with the sheriff to engage him to leave things as they are.

Whether, even supposing the inconveniences in question to exist — and *that* in the utmost degree of force in which they are capable of existing — whether, even on that supposition, they would *in law* constitute any sufficient *warrant*, or so much as an *apology*, for the mal-practices, the existence of which is admitted, is a point on which not much seems to require to be said.

But the very existence of the inconveniences in point of *fact*, seems to call for an inquiry, which will be the business of another chapter.

§ 2. *The Letter in its own words.*

"TO SIR RICHARD PHILLIPS.

"Old Bailey, April 9th, 1808.

"SIR, — Permit me to thank you for the very flattering manner in which you were pleased to make the communication I received, with respect to the summoning of special juries. *Mr.* ——'*s observations were perfectly just*;* I cannot but observe, how-

* *Mr.* ——'*s observations were perfectly just.*] These observations are those of the learned gentleman who dates from the *Temple*, as above: which observations have for their basis the opinion that the clause in question — viz. the clause having for its object the securing a constant change of jurymen — or, at any rate, the preventing the too frequent "*returning to serve*" the same juryman — "applies (to use his own words) to *special* as well as to *common* jurymen." Such is the opinion with which the Lord Chief Baron declares his concurrence.

Here then is an act of parliament, which, in the opinion of the learned judge himself, was meant to prevent a man from serving in Middlesex, as a special juryman, so often as *twice* in the compass of *three* terms; and this practice it is, that, understanding it to be prohibited by act of parliament, the learned judge, having all along persevered in the countenancing of it, labours, as we shall see, in this letter, to preserve.

And now comes upon the carpet a circumstance of so whimsical a complexion, that the reader had need of some time to put his mind in order for the reception of it. Such is the fallibility of human learning, that notwithstanding the learned Templar's "*observations*," and the "perfect *justness*" of them, yet so it has happened, that in the pains we shall see him take to run counter to the intentions of an act of parliament, the learned judge was disappointed: the case being, that after all, on the part of the penner of that act, there was not, in truth, any such intention as that it *should* be construed to extend to *special* juries. This will be shown presently. But as to the contempt meant by the learned judge to be put upon the authority of parliament, that being an act of *his own*, and not at all affected by the intention of any *other* person or persons, such as the framers of that or any other act, we can do no otherwise than take *his* word for it.

In regard to *falsehood*, a known distinction among moralists is that between a *logical* falsehood, and an *ethical* one. Your *logical* falsehood is — where, for example, you speak of a thing which is *not* true as if it *were* true, whether you *think* it true or not: your *ethical* falsehood is — where you speak of a thing as *true*, *believing* it not to be *true*, whether it be really true or not.

The distinction thus suggested in the first instance, by the particular sort of obligation which regards truth, will be found applicable, with equal propriety, to an obligation of any other nature, together with the *contraventions* that correspond to it: and, in the present instance, it may on this or that occasion be of use to us, to save us from the imputation of incorrectness and injustice, should it happen to us, in speaking of any of the laws in question, to speak of them not only as *contemned*, but as *contravened*.

In regard to the *packing* system, what will be clear enough to any person who will take the trouble of looking into the two acts in question, with this view (3 Geo. II. c. 25; 4 Geo. II. c. 7) is — that the foundation of it having, not only at the time of passing the first of these two acts, but a considerable time before, been laid — laid and established by the practice and rules of court, which in each court gave the nomination of spe-

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ever, that he uses the expression, 'if you think it worth your while' to make any *reform*:* this, as far as respects the Court of Exchequer, I have not found, from the ex-

cial jurors to the *master*, the dependent of the judge—the lawyers, by whom or under whose direction the several acts were penned, and who, it will appear probable, had for their principal, and perhaps for their sole, sincerely pursued object, the giving to this system an efficient degree of extent, took effectual care not to divest of that permanence, which was so essential to the expected service, the bodies which it had in view to organize.

In the character of *special jurors* as in any other, men (they saw well enough) could be depended upon only in proportion as they were tried. On this principle it was, that the contemplation of the *obs* which every now and then there might be to do, produced a natural aversion to new faces. A determination was accordingly taken, that when the *permanence*, which had been denounced to parliament as the cause of the mischief, came to be prohibited, the prohibition should, if possible, be prevented from extending to *special* juries.

At the same time, as in the case of jurors in general, "*corruption*" had been the abuse, which, having called the attention of the legislature to the subject, had given a preamble to the first act, a sentiment, compounded of shame and apprehension, prevented them from attempting to establish the exception in express words. The course they took was a more ingenious one. Exception, they inserted none;—at the same time they so managed the act, that should the time ever come for carrying it into execution, it would, in virtue of this or that word, ingeniously slipt in for the purpose, be found, as in this very instance it *has* been found, *inapplicable* to *special* juries.

Not to overload this note, a sketch of the course they took for compassing this point is posted off to a separate chapter. (Chap. V.)

The odd thing is, that so many learned persons—two others, besides the pre-eminently learned one—should have concurred in a mistake, thus unfavourable, in appearance at least, to the state of things he was upholding at the expense of so much pains. But, to find interpretation for all the wisdom displayed by so many learned persons, would be too much for one unlearned one. Sufficient be it for him simply to point it out as forming the matter of a problem, which must be left to take its chance for solution from some other hand.

What makes the oddity still more odd is—that of these same statutes the non-applicability to the subject of special juries (those clauses of course excepted, in which special juries are expressly mentioned) had been declared more than once, after solemn argument, by the court of *King's Bench*:—once in a comparatively recent case, that took place in Michaelmas Term, on the 25th of November 1793—about three quarters of a year after the day which gave the benefit of the Lord Chief Baron's wisdom to the *Exchequer Bench*;—once before that time, in a comparatively ancient case, determined by the Lord Chief Justice Raymond, in the case of the *King* against *Franklin*, Hilary Term, 5 Geo. II. anno 1731—about a twelvemonth after the passing of the first and most efficient of this string of acts;—a case the report of which was, on the occasion, and for the purpose, of the cause last decided but here first mentioned, dug up by one of the judges (Buller) out of the heap of dust, in which for

two-and-sixty years it had lain buried—buried as usual, lest the knowledge of it should become possible to those who were to be made to suffer for not knowing of it.

If indeed so it be, that on this occasion it had become an object with his lordship to show to the people of London and Middlesex, through the medium of their sheriff, what sort of regard English judges are in use, and upon occasion disposed, to pay to acts of parliament, on this hypothesis the particular turn thus taken by his lordship's wisdom may be accounted for, by being brought within a general rule.

When an act of parliament is produced to an English judge, and the execution of it called for at his hands, the first question with him naturally is—*whether it suits his taste*: if *yes*, he gives it his *fiat*, or what he calls "*his support*:" if *no*, he deals by it as the pre-eminently learned person here in question dealt, and may be seen dealing, by this law, the relevancy of which, if not actually believed by him, was at least feigned to be believed, for the purpose of showing his regard for it.

Thus, in the instance of Lord Chief Justice Raymond, in the case dug up, as above, by Mr. Justice Buller—speaking of the act, then as well as now, in question—viz. 3 Geo. II. c. 25,—"*he*," viz. Lord Raymond, "said—*the act of Parliament was a very beneficial act*, and ought to be supported." Note, that being in the secret, he knew that this act, beneficial as it was, was not, on any occasion on which corruption could have been checked by it, ever intended, otherwise than in show, to extend to *special* juries: and consequently, that it would not stand in the way of any of that corruption, for the purposes of which the special jury system had been instituted, and in and by this very act, was by the *astutia* of the learned penmen spread out to an all-comprehensive extent.

He, therefore, who should take upon him to impute to English judges, or to any of them, any such intention as that of overthrowing *all* acts of parliament without distinction, would utter a gross calumny: as gross a one as if he were to impute to Lord Ellenborough any such intention as that of suppressing *all* publications without distinction. No: where, as in the instance of Lord Raymond, an act of parliament has the good fortune to be agreeable to their taste, and the parliament by which it has just been enacted is still sitting, in any such state of things, such is their condescension, they are ready to give it their "*support*."

In regard to the question whether, as per hypothesis, in thus setting up an act of parliament his lordship's object was to show how easily he could put it down, some additional light may perhaps be thrown upon it, by a case which there will be occasion, a little farther on, to bring to view: (see Part IV. Chap. II.)—a case in which, if the evidence be to be believed, we shall see the judges, all twelve of them, concurring in the declared determination to persevere in defeating the express words, as well as unmisconceivable intention, of a law, made for the sole purpose of putting an end to certain oppressions and extortions, the profit of which had thus been vainly endeavoured to be snatched out of their hands.

* "*If you think it worth while*" *to make any reform.*] Of the letter thus alluded to, the words

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perience of above twenty-four years, in the character of his Majesty's law officer, or as Chief Baron, to be *worth while;* as *I have never seen the least inconvenience** arise from the manner of striking and summoning special juries, during that time. *A great inconvenience* to the special jurors must arise from summoning those from a *distance.*†

"The causes in the court of Exchequer are of a nature quite peculiar to themselves in many respects, and the duration of any cause is particularly uncertain. In order to obtain their attendance, it has been found *expedient* to summon such as live *near to London,*‡ otherwise there would be *little expectation of* having *anything like full special juries,*‖ and *almost all causes in revenue matters are tried by special juries.*

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are—"If you should think it worth while to *rectify* the practice which has obtained" . . . . . Here we see—alas!—a *jeofail:* a jeofail in the shape of a *misrecital:* an error large enough, had it been properly placed, to have given impunity to a murderer or an incendiary, and sent them out to commit fresh murders or light up fresh fires. An error? But to what *cause* shall it be imputed?—to *laches* in the *clerk?*—not it indeed:—to *astutia*, and welcome:—to *laches?*—presumptuous thought!—such weaknesses the law suffers not to be imputed to *such* clerks.—Some *other* cause must therefore be found for it:—but of this presently.

The light in which the two learned lawyers—the *official* and the *professional* one—the light, with its different shades, in which the supposed contravention is considered by them, is well worth observation: the rather, as it affords a further specimen of the sort of consideration which the law of parliament is accustomed to be held in by the fraternity of lawyers. By the professional lawyer, the change proposed by the sheriff is admitted to be a "*rectification:*" a substitution of *right* to *wrong:* a substitution of obedience to an inveterate course of wilful and contemptuous disobedience. But, so rooted in the minds of the brotherhood is the habit of treating with contempt the only rule of action which is not, under the usurped name of *law*, a system of imposture, that, let the *disobedience* it has been treated with be ever so flagrant and undeniable, a *doubt* is expressed, whether it be "*worth while*" to substitute to it the contrary habit of *obedience.*

So much for the learned *counsel:*—as to the pre-eminently learned *judge*, when *he* comes to take up the matter, thus far we see him concurring with the learned counsel at the first glance; viz. that it rests with them and theirs, whether to pay any regard to an act of parliament or not: and finding, in the doubt of the learned counsel, a sort of *sanction*, *i.e.* what among lawyers passes as such, for the practice—for *that* practice which, *without doubt* on *either* part, the legislature had, after stigmatizing it as "*corrupt,*" (see Part I. Ch. IV. § 5,) prohibited, he lays hold of the doubt, as a sort of *authority*, entitled to have its weight, where the authority of parliament had *none.*

In the opinion thus given by the learned counsel, one little expression, however, did not altogether quadrate with the views of the learned judge: I mean the word "*rectify;*" because, in the idea of *rectification*, a word so far from being suitable to his purpose, is necessarily included the actual existence of something *wrong*, on an occasion where the thing signified by it was to be discountenanced. His Lordship puts aside accordingly this unguarded word, which does *not* suit his purpose, and substitutes another which *does* suit his purpose. This other is the word "*reform;*" a word which to lawyers in general, in concurrence with all others who have an interest in the maintenance of abuse in any shape, is an object of such well known horror: having for its synonymes, *theory*, *speculation*, *innovation*, *infidelity*, *jacobinism*, *confusion*, *destruction of social order*, *et cætera*, and so forth.

Judge and barrister together, it is curious enough to observe what, in the judgment of those learned persons, *is*, as well as what is *not*, "worth while." What *is* worth while, is—violating a fundamental principle of the constitution: what is *not* worth while, is—*ceasing* to violate it. What *is* worth while is—*breaking* the law: what is *not* worth while is—*obeying* it. What *is* worth while is—*forming* this judicatory corps of *gentlemen pensioners:* what is *not* worth while, is—*disbanding* it.

* *Never seen the least inconvenience.*] As to the practices and results, in which his lordship's good fortune in not seeing "*any the least inconvenience,*" is thus declared, they have already been brought to view.

† *Inconvenience . . . . . from . . . . distance.*] On the subject of inconvenience in *this* shape, see the next Chapter.

‡ *To obtain . . . . attendance . . . . expedient to summon such as live near to London.*] *Expedient?* Yes:—and that on two accounts. 1. Men fit for guinea-men are more plentiful *near* to London than at a *distance.* 2. For a guinea, with the chance, and that not a bad one, of earning several more guineas than one, not to speak of a good dinner, many a man would be content to come a mile or two, who would not be content to come "*fifteen*" miles;—the distance spoken of by his lordship immediately after as having been a subject of complaint. A mile or two a gentleman may come on foot; fifteen miles, unless it be for a wager, he will scarce ever come otherwise than with horse or carriage.

Necessary? No: unless so it be—that it being *found* or *deemed necessary*, or at least *agreeable* and *convenient*, to have regard to the convenience of the individual, where he has the good fortune to be an *Esquire*—it is to *that* purpose *necessary*, that none should be looked for, but those to whom the visit will have proved *convenient* and *agreeable.* In the case of the man, who is *not* in any such high degree favoured by fortune, all *such* necessity is out of the question: what necessity there *is* presses all of it upon *his* shoulders; and consists in necessity of attendance, on pain of "penal visitation"—no matter how great the distance, no matter how great the inconvenience. (See above, Part I. Chap. IV. § 5.)

‖ *Otherwise . . . . little expectation of . . . . full special juries.*] To the packing system, this *fulness* on the part of special juries is rendered material and subservient by more circumstances than one:—

1. It keeps out *talesmen*, plebeian substitutes, who, being taken at random, could not in point of discipline be to be depended upon, and among whom in a cause of *real* interest, such as a *libel* cause, any one bad player might, under the sys-

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"Within the last half year, I have had complaints in court, by *gentlemen* summoned on the special jury, of being brought *fifteen miles from their homes*,* whereas the persons living in the immediately adjacent parts of the county could attend without any inconvenience. I may add, too, that some experience in serving upon Exchequer special juries is far from being detrimental to the public or defendants, inasmuch as the *instructing jury after jury*,† in the conduct of

tem of *forced unanimity*, by possibility be sufficient to spoil the whole game.

2. The greater the number of those who attend, no one of whom ever does or ever can be made to attend, unless attendance be perfectly *convenient* and *agreeable* to him, the more *extensive*, and consequently the more valuable, this branch of patronage.

So much for *convenience*: *there* we see the convenience. But *expedience* is alleged: and whence comes this expedience? The answer is—that unless "*such*" were taken "*as live near to London*," a full attendance—"*anything like a full attendance*"—*would be little to be expected*. But why so? The persons on whom this obligation lies, all of them in affluent circumstances—affluence in every instance the declared ground of their selection—fifteen miles the longest journey which any one of them has to take—under these circumstances, out of four-and-twenty to whom on the occasion of each cause the commands of justice are signified, can twelve be too great for the number of those on whose part obedience to those comamnds can with probability be expected? Of such *non-expectation*, or rather such *despair*, what can be the ground? In other counties, the journey may be from twice to thrice as long—the persons to take it may be such as are not in possession of a *fifth*, a *tenth*, a *fiftieth*, a *hundredth* part the opulence: yet in that state of things what complaint is ever heard of a want of jurors? Mark well the consistency:—men who can *best* afford it, and would be well *paid* for it, and who would not have to come so great a *distance*, cannot be expected to come, even in so much *smaller numbers*:—while men who can ill afford it, and are not paid for it, come from a greater distance, and in greater numbers.

"Aye, but these are *but common* jurors:—men 'who have nothing to do with the laws,' as has been well said, 'but to obey them:'—and who are accordingly kept as much as possible from knowing the laws, for fear they should obey them. But the others (*you seem to forget*) are *special* jurors: and do you consider who *special* jurors are?—Why, Sir, they are all *gentlemen*:—gentlemen, every man of them! and when you consider this, you cannot surely be so extravagant—can you?—as to *expect*, that *they* shall be forced to attend, whether it be convenient to them or no, just as if they were so many petty farmers, petty handicrafts, or petty shopkeepers?"

Here, then, on this occasion, as on every other occasion, we come, sooner or later, to the radical and all-pervading grievance. One law for gentlemen—another for low people;—comforts and attentions heaped together on one side—burthens and neglects on the other;—such throughout is the spirit of that spurious kind of law which has the judges for its authors: such is the "*respect of persons*," which, in the bosom of English judges, occupies the place of justice!—And so rooted is this partiality, that we see it thus openly avowed, just as if it were a *duty*; in which character it seems actually to have passed itself upon the religion of this our learned judge.

Now, as to the *gentlemen* in question, to what *title* is it that they are indebted for the favour thus habitually shown to them by this our learned judge, the representative and mouthpiece, as on this occasion he may well be taken to be, of the learned and reverend brotherhood, of which he is so distinguished a member? Is it to any *particular* connexion, in the way of interest, alliance, friendship, or acquaintance, with those learned and reverend persons, any of them, or any of their connexions? this is partiality upon a small scale. Is it purely to that of their belonging to the class of *gentlemen*? this is partiality upon the largest scale.

* *Complaints . . . . of having been brought fifteen miles.*] Of the comparative amount of this hardship, something has been said already (Part I. Chap. IV. § 5,) and something more may perhaps be to be said anon. At present, what seems to call for notice is—the service rendered to the *packing* system by the sort of oppression thus complained of, taking into the account the complaints that were the fruit of it.

The packing system having been for years past organized, and a determination taken accordingly to maintain and defend it, whatever was capable of being made to furnish a plea in favour of it, might thus be rendered subservient to its maintenance and defence. On this or that occasion, on which the verdict was, to the powers above, a matter of indifference, this or that gentleman was summoned, of whom it was known that by his situation, geographical, domestic, or political, he was rendered unfit for service in the guinea corps. He came accordingly, served and grumbled: and thus, out of the grumblings of this *medecin malgré lui* of the body politic, was made an argument, for composing the establishment of *willing* ones.

Not having the honour to be in the secret, it is only from appearances that I can speak:—from appearances—and there they are.

† *Instructing jury after jury . . . exposes both parties, &c.*] Symptoms of somnolency begin to discover themselves: and, on the part of the jurors or others, to whom the *instruction* is to be applied, if of this sort be the form in which it is to be administered, some danger there seems to be, lest the somnolency should be found contagious, and "the *points*" do as well as they can, without being "*understood*" at all.

But, this being one of the two grand arguments, of which, on the ground of reason and utility, the pillars of the packing system are composed, an attempt will be made presently to get to the bottom of it, and extract whatsoever *instruction* may be capable of being extracted from it.

Meantime may not this be among the "*points*" that might be found lying there (I mean at the bottom of the argument) or thereabouts?—viz. that the instruction of a jury is work for the judge; and, in particular, that sort of work, which sometimes calls for learned *thought*, and always occupies learned *time*?

If so, the reason, it must be confessed, is by no means a purely personal, being in no small degree a public, one. For, besides those operations of a nature purely mechanical, which, in the equity

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many species of manufactures, and the laws on the subject, exposes both parties to the hazard of the *points* being ill understood, and hastily determined by them.

"During the long time that I have been employed in the court of Exchequer, I have known *few verdicts from which I should have dissented*,* had I been one of their inestimable body, and they have been cases wherein the determination has been favourable to the defendants.†

system more especially, have been so contrived as to oppose a constant and unbending bar to the charge of *precipitation*—in regard to the work of *decision* in particular, which can never be reduced to the simplicity of pure mechanism (See Scotch Reform, Letter II, Devices), in such manner as to convert into absolute superfluity every application of human reason—in regard to this *special* kind of work, somehow or other so it has happened, that, in that honourable court, the rate of progress has, for some years back, been such as to have been regarded with more complacency on the *defendant's* than on the *plaintiff's* side. Speak of the *Exchequer*—aye, but look to the *Chancery*: speak of the *Chancery*—aye, but look to the *Exchequer*: speak of *English Equity*—aye, but look to *Ireland*—such is the sort of comfort which plaintiffs have been in use to administer to one another: yea, and continue to administer to one another to this day, unless in *Ireland* any thing has happened within this year or two, to break in upon the regularity of the consolatory circle.

Enter the *House of Lords*, regularly with the seals and mace, the motto *festina lentè*, you will find, has travelled up to the House of Lords: till, what with mechanical, what with ratiocinatory, or at least disceptatorial cunctation, the pace of justice is, in that her highest temple, adapted—if not to the simplicity and felicity of the golden age, at any rate to the longevity of antediluvian times.

He that has to speak of these things, let him look well to his words: let him speak in parables, borrowing a ray of obscurity from the speeches which are his theme. It is at this price only that he can hope to foil the official *Œdipus*, the subpœna'd interpreter of informational *inuendoes*. But let not men complain: for it is for the use of such *Fabiuses* in the character of *fee-eaters* (called by the Greeks δικόφαγοι) that in the character of *plaintiffs* and *defendants* men were made.

* *Few verdicts from which I should have dissented, had I been one*, &c.] *Verdict* and *dissent*? *dissent*, and, on the part of a supposed juryman, from a *verdict*? Strange and never-before-associated ideas! Alas! were these waking or sleeping thoughts? In what region of romance were the thoughts of his Lordship wandering, when in idea he heard a *verdict* pronounced by a jury, and himself a *dissenting* member of it? By what process were two phenomena, which in real life are so incompatible, brought together by his learned fancy? Speaking with respect—but, forasmuch as all this is but supposition, speaking *out*—was it that his Lordship was pleased to *perjure himself*? joining in one of those "perjuries" which Judge Blackstone has found so well associated with "piety," and which the humanity of so many of his reverend brethren have so frequently, so frankly, and so successfully manifested?—was it then that thus in vision he was pleased to perjure himself, declaring *assent* by his lips while *dissent* was in his breast? or was it, that at the end of a certain number of days and nights of inanition, having fainted under the torture, he had thus by silence given *opportunity* to that verdict, to which his *assent*, expressed either by words or action, could not by any agonies have been extorted?

Or was it, that instead of fancying himself in the jury-box, he was for the moment nodding, as if with his old friend "good Homer," and occupying—not as now upon the woolsack, but on some other seat, more elevated, and not far distant—a place in the *House of Lords*?—forasmuch as in that august assembly, *dissents*, however rare, are neither unexampled, nor (since *there* happily they may be avowed *without* perjury) unavowed.

On the principle of the apology, made by a *Dr. O'Meara* of the day, for pronouncing before a polite congregation, so unpolite a word as *hell*, may not an apology here be due, for a word so near of kin to it as *perjury*? An apology?—yes, by all means:—considering that in so many a reverend company, the *less* odious the *thing*, the *more* odious the *name*.

† *Favourable to the defendants.*] Taking for granted, which I do sincerely and without difficulty, that the cases alluded to by his Lordship under the description of *cases in which he "should have dissented from the verdict"*—it being as above "*favourable* to the defendant"—were cases in which it was unjustly favourable, *corruption* by individuals has already been stated, in another place, (Part I. Chap. IV.) as an operation in which the effect in question may, with no slight appearance of probability, have had its cause.

"What? is this then your hypotheais?—is this the persuasion you are seeking to spread—viz. that in the 84 special jury causes tried in a year in the court of Exchequer (Phillips, p. 159,) there is not *one*, in which the verdict has not been a *corrupt* one? corrupt on one side or other—either on the plaintiff's or on the defendant's side?"

My answer is—that, in truth, among a given number of verdicts, I should not expect to find *more* wrong ones in the court of *Exchequer*, than in any other court taken at random. I could even add reasons—were there in this place any use in it—reasons why I should not expect to find even *so many*; I could go further *still*, and add reasons why, *in that judicatory*, I should expect to find the number of wrong verdicts, as well as the degree of aberration in cases admitting of *degree*, rather diminished by the effect of the influence exercised on the guinea-corps, than increased. But, without having any other ground than as above, what I should not be at all surprised at is—to find that now and then the favour shown to individuals in the character of defendants had had *corruption* in some shape or other, for its cause. At any rate, supposing corruption on this side never *yet* produced, yet if it be possible for corruption in juries to be produced, produced in any other way than by open allowance of it by law, I can think of no other by which so high a probability of corruption could be produced, as by the permanency thus secured.

As to *other* courts, I have stated already (Part I. Chap. VI.) that the court particularly in question here—*viz.* the court of Exchequer—is not a judicatory, in which, notwithstanding my ab-

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"Having hitherto *seen** no reason to complain, as far as my experience goes, it must be left to your own discretion,† whether you will risk the making us *better than well*.‡ I am, Sir, with great respect, your obedient humble servant, "A. MACDONALD."

horrence of this system of corruption, I should expect to find wrong verdicts the result of it: and that — except such casual partialities, to the harbouring of which all judicatories are more or less exposed — it is only in the King's Bench — and even in the King's Bench, in such cases alone as are, in some way or other, connected with what is called *politics*, and particularly in *libel law cases* — that I should expect to find wrong verdicts produced by such a cause.

As to the court of Exchequer, in *that* judicatory, I know of no worse nor other bad effects as produced by the *packing* system, than, on the part of judges, a confirmation of the habit of open contempt as towards the authority of the legislature, the equally open violation of an universally acknowledged principle of the constitution, and the uneasiness, and by no means groundless alarm, produced in the breasts of the people, by the apprehension of injustice, though in cases in which I myself should not *expect* to find it taking place.

Now these are, in my conception, all of them very serious evils. Having a thousand pounds justly due to me, suppose I were to give to a juryman a hundred pounds, or the promise of a provision for some friend or dependent of his, to secure my thousand pounds to me by a favourable verdict: and the verdict, with a thousand pounds damages, is found for me in consequence. Here, by the supposition, the verdict itself is not a wrong one: but, supposing the transaction between me and the juryman to transpire, would not the evil be a very serious one? Would not the feeling of insecurity under the law be much more intense and extensive than it is even at present?

* *Having seen no reason to complain.*] For *seen*, ought we not rather to read *felt*? *Felt*? no: for complaining of a system so avowedly *convenient*, and so declaredly cherished, *felt*, we may well believe, no reason ever has been, by the reverend and learned judge. But *seen* . . . . . ? no; nor perhaps *that* neither: for when a man's eyes are shut, what is there that he can see?

† *It must be left to your own discretion, whether you will risk.*] Left to the sheriff's own discretion? Yes, so it was: viz. *to risk* or *not to risk*: forasmuch as to that discretion that choice could not *but* be left. But when the discretion had been exercised, the choice made, and the risk incurred, the success of the measure risked, was it left in any such rash and irregular hands? Not it indeed: no, it found its way into *regular* and *well-practised* hands: well-practised, and *well-instructed* (it may well be believed) in the art of weighing *practical* and *official* inconvenience against *speculative* convenience. *See* Chap. IX. Transactions at the Remembrancer's.

‡ *The making us better than well.*] We are come at length to the grand instrument of defence, by which the scheme of the assailants of the packing system was finally to be blown up, and at the same time, by delicate and well-turned ridicule, covered with contempt: the well-pointed epigram, made out of the Italian epitaph, which, if a little of the stalest, was not the less fit for the purpose:—

CHAPTER IV.

OBSERVATIONS ON THE LORD CHIEF BARON'S DEFENCES.

§ 1. *Insufficiency of the Defences in any case.*

COME we now to the consideration of the two inconveniences, the pressure of which on his lordship's mind became so irresistible, as to force him at once upon two measures of such extremity as the violating an acknowledged fundamental principle of the constitution, and travelling on for years in a course of persevering and open-eyed disobedience, in the teeth of the authority of the legislature.

Not that, had the advantages professed to be expected from this transgression been ever so many times as great as even by himself they could have been supposed to be, they could ever have amounted to so much as the shadow of a defence. On every imaginable supposition, the operation thus performed by the *subordinate*, by the *judicial* authority, is indefensible. The change thus effected, would it, if proposed to parliament, have been approved and carried into effect by parliament? — attempting it by judicial authority was *needless*: — would it have been disapproved? — attempting it by judicial authority was not fitting.

Instead of that of George the Third, had the reign been such an one as that of Elizabeth, in which the intention of sparing the subject as much as possible — perhaps for ever — the trouble of paying their homage at the foot of the parliamentary throne, was declared — declared, from the throne itself, and

Epitaph on a *valetudinarian*, who quacked himself to death: —

Stavo *bene*:
per star *meglio*,
sto qui.

Thus done into English by T. Sternhold and J. Hopkins: —

Once I was *well*, my friends most dear:
Thought to *get* better — so got *here*.

Ah, poor Sir Richard! Little did the good Archbishop, when some seven or eight-and-forty years ago, in the royal school at Westminster, he was delivering, to the future Lord Chief Baron, the splendid and well-earned fourpence, think of the doom he was preparing for you! Ah, poor Sir Richard! Well — if slain you are, it has not been by an indelicate or ignoble hand.

Yes; if stone dead, console yourself: for you lie not in bad company, any more than without an epitaph. Yes: of full many a reformer's fame has the blood been drunk by this arrow, still thirsting after more.

But the ridicule of it? Ah! thank your stars, once more, for that on this occasion you were not the *agent* but the *patient*; for, in the opposite case, a lot somewhat worse than metaphorical death — life or death in the house of *legal reform* at *Gloucester* or that at *Dorchester*, would, if Lord Ellenborough's law had received its execution, have been your fate. (See Part I. Chap. IX. § 5.)

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merit grounded on it — at *such* a period — such usurpation might, in such supposed advantages, have found an excuse. But *now* — in the 19th century — when the return of the sessions is become no less regular than that of the seasons — is this a time when the plea of necessity can form so much as a veil — any even the slightest veil — for such usurpation?

Yet, though the work be but supererogation — and the words bestowed upon it little better than surplusage — let us take up the arguments one after another, and look a little into their texture. Let us see whether, when put together, there be in them indication of any such mass of substantial inconvenience, as could have served for a ground, even for so much as a constitutional and regular recourse to parliament for the removal of it.

§ 2. *Defence* 1 — *Avoidance of Vexation*

"Brought fifteen miles from their homes!" Alas! poor "gentlemen!" Brought fifteen miles, each of them for no more than a few guineas — possibly even for no more than one — to a place to which everybody comes, and to which, but for the summons and the guineas, without any guineas received, and at the expense of guineas paid, they would otherwise have come!

Oh! what a charming thing it is to be a gentleman! If, on the bed of roses you repose upon, there be but a single leaf that has a pucker in it, how tender the sympathy excited in reverend and learned breasts!

Fifteen miles from the metropolis! — and in the whole of this almost smallest and most compact of English counties, exists there really any one spot banished to so tremendous and toilsome a distance?

What if it had been in one of the large or straggling counties? — in Yorkshire, in Lincolnshire, in Devonshire, in Sussex, for example? In any of those instances, how many more miles would the maximum have swollen to? But the imagination is appalled, and shrinks from the research.

Turn now to common jurymen — for the definitive trial of causes the only sort of jurymen which till t'other day the constitution knew of. Place them in one of the large or straggling counties, and fetch them to court, each for his *eight-pence*.

Aye, but these are *low* people — people who cannot say their catechism — their *Perceval* catechism — (*See* Part I. Ch. XI. § 2) — people of no "*family*" — people (as we shall learn from the observations of the learned Templar, whose "*observations* are so *perfectly just*") — people whose *time*, if it be not absolutely worth nothing, is at any rate, in the estimate of *Exchequer* justice — or say at once of *Westminster-hall* justice — not worthy of a thought — people who, except for the purpose of thus serving in it without recompence, are thrust forth in a lump out of the *temple of justice* into the *pit of outlawry*, lest the fund of rewards provided for learned merit should fail of being adequate to that exclusively important service.

As to the principles, the true legal principles, on which *the value of time* ought to be computed, this topic will meet us in the next chapter.

§ 3. *Defence* 2 — *Benefit of Instruction.*

Direction to Judges, Advocates, Politicians, and other Debaters; showing a safe method of defending the wrong side of any question, especially where you have the advantage of situation on your side.

Where the nature of the case is such as to afford you, for the purpose of your argument, no fact, but what, if relevant and particular enough, would not only be false, but too plainly so not to be *seen* to be so, mount up into the region of generalities, till you come to some proposition, which, being by reason of its generality neither true nor false, is by that means saved from the inconvenience of being proved to be false. By this means, should you fail of convincing men, those excepted who find their convenience in being convinced, at any rate (what is no small point gained) you secure yourself against being confuted. And among men of modesty and diffidence, those who cannot exactly find out what your meaning is (at any rate, if your "situation" be a "high" one, and *they* scholars bred up in Blackstone's school,) will, if they do not plainly see your meaning to be *false*, give you credit for its being a good and true one.

Whether a rule to this effect was ever laid down in *words*, is more than my slender stock of learning will enable me to pronounce: — that it has been *acted* upon, and *that* right frequently, may be asserted with less diffidence. *Witness ourselves at Westminster, et cætera*, and so forth: — at Westminster, in all our *courts*, and moreover in both our *houses*.

"*Experience . . . . far from detrimental*" . . . . . Instruction needful to human ignorance — two lessons better than one — three better than two, where two have proved insufficient — against maxims such as these, where is the caviller so perverse as to pretend to have found anything to object? Proof against all disproof, what, at the same time, does all this prove? Among those "*many species of manufactures*," had but a single one obtained a mention, here it is that, if in the *general* proposition, thus cut down to a *particular* one, a speck of *error* had found itself included, the finger of *detection* might have been laid upon it: — meantime, in default of stronger handles, let us look out for some-

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thing that for the moment may be taken hold of, though it be but of straw or cobweb.

But before we proceed to *observe* upon it, let us, by way of necessary preliminary, begin with the endeavour to *interpret* it, or, as they say in Westminster-school, and in Westminster-hall, to *construe* it — or, in plain English, to find out *the* meaning *of* it, or, when the worst comes to the worst, *a meaning for it*.

"*Instructing jury after jury* . . . . *exposes*" (says his Lordship) "*parties to a hazard*." . . . . . Not that from this we ought to conclude that, taken in the abstract, *instruction* is a *bad* thing: — bad, either for those to whom it is *not*, or those to whom it *is*, communicated.

No, nor yet that, in taking for the subject of instruction "*many species of manufactures*," there is more of hazard than there would be in confining the instruction to *some* of them, and leaving the *rest* to go without it . . . . But . . . .

But — lest to construction, carried on upon this plan, there should peradventure be no end, let us lay aside *construction*, and take up *paraphrasis*, or, as we say in English, *paraphrase*, instead of it.

Many are the species of manufactures, in the instance of each of which, in respect of this or that part of the whole assemblage of *instruments* and operations, which, on the occasion of a revenue cause in the Exchequer, is liable to come in question, the *demand* for instruction and explanation is so considerable, that the utmost quantity of instruction that will, generally speaking, have been afforded on the occasion, and brought within the compass, of a single cause, will not have been sufficient to *satisfy* it: so that, should the same part of the process be brought a second time under the notice and cognizance of one and the same juryman, the probability is, that with the help of the additional instruction which on this second occasion he will receive, the conception which he will have obtained of the matter at this second trial, will be more accurate and complete, than the conception he obtained at the first trial, whereby, in so far as depends upon him, the chance in favour of a right verdict will receive a proportionable increase.

§ 4. *Mischievous Doctrines involved in this Defence.*

Meantime, if this, or any thing like it, be the argument of this pre-eminently learned judge, let us observe now where it leads. We shall find involved in it the following doctrines:—

1. That, in respect of causes of the particular description in question, jury-trial, in the ordinary mode, is not a fit mode of trial: at any rate, not so fit as the new mode which he has contrived to substitute to it.

2. That for these causes, the more proper, if not the only proper species of judicatory, is that which is composed of a *board* or *bench* (call it which you please) of permanent judges: for example, such as the *board of excise*, which already to a considerable extent has jurisdiction in these same matters: the principal difference being, that in this special-jury board there is an over-number of judges, to make a kind of *rotation*: which species of judicatory, preserving to it still the name of judge and jury, with the forms of jury-trial, he has substituted accordingly

3. That, the mode employed by him being such as renders this secretly formed board of completely dependent judges, under the disguise of jurymen, applicable with equal facility, and in practice, as there is reason to think, (*Suprà*, Part I. Ch. VIII.) actually applied, at the pleasure of dependent servants of the crown, to crown causes in general (capital, and next to capital, excepted,) and, in particular, to crown libel law causes, the superiority of advantage attached to this sham jury-trial, as compared with the genuine mode, is such as warrants the departure made to so great an extent from the acknowledged principles of the English constitution.

4. That this superiority is even such as not only *would* warrant *the legislature* in making the change, but actually *has* afforded to *a judge*, viz. *to himself*, a sufficient warrant for making it *of his own authority*, and *without* warrant from the legislature.

§ 5. *Acknowledged Nothingness of the Advantage.*

Such being the price paid, at the expense of the constitution, by this our learned improver, for the sort of improvement introduced by him, with such advantages as may be found belonging to it, a question to which the mind of the inquirer is naturally and unvoidably turned is — what may be the amount of this advantage, according to the estimate formed of it by the learned improver himself: this being the advantage for the sake of which he has been content to give birth to all those other results, the complexion of which is, to ordinary eyes, so far from being advantageous? — and, for answer to this question, what we find, certified to us by his own words, is, that, in his own estimation, this advantage amounts either to nothing at all, or to something between nothing and next to nothing. It amounts not so much as to the absence — total absence — of all "*detriment*" or inconvenience: it amounts to no more than the absence of "*detriment*" in *one* particular shape; viz. in the shape of "*experience*." "Some *experience*," says he, "in serving upon exchequer special juries is far from being *detrimental* to the public or defendants". . . . whereupon immediately come those clouds, in which we

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have seen this pre-eminently learned person losing himself, when he goes on to speak of the "*hazard*" to which "*both parties*" are "*exposed*" by "*the instructing jury after jury.*"

While puzzling myself with this glimpse of an advantage, being curious to discover, if possible, what might be the amount and value of it in the eyes of the learned improver himself — and, instead of recurring at once to his own estimate, as above, having fallen unawares into the error of endeavouring to determine it, from the price I saw he was so well content to pay for it, I had strayed insensibly into the inquiry, what might be the *real* amount of it; and in this view, at the cost of some days of labour, I had actually pursued to no inconsiderable length the analysis of it. But upon turning once more to his own words, and finding that it was not easy for any person whatever to set this supposed advantage at any lower rate than it had been set at by the learned improver himself, I saw at length, and not altogether without regret at the thoughts of the time thus wasted, that I had been all this while combating without an antagonist.

I therefore spare the reader, for the present at least, the labour of following or attempting to follow me, through a sort of analysis so dry and intricate as to involve, in the way of indication at least, a mass of mathematical calculation. But should it ever happen to his Lordship, or to any avowed advocate of his Lordship, at any such *bar* as that of the *House of Lords*, or even that of the *public*, to draw into question by any arguments the propriety of this his estimate, I mean in so far as it sets down this so dear bought advantage as amounting to next to nothing, I am ready to produce this my analysis, and, upon the supposition in question, to defend, against these his Lordship's *first* thoughts, any *second* thoughts, either on the part of his Lordship, or on the part of any other such less dignified defenders and gainsayers.

§ 6. *Short Exposure of the supposed Advantage.*

Meantime, in demonstration of this nothingness, one argument (it being a short one, and not involving any inquiries of detail) shall not be consigned to oblivion with the rest.

On the part, and in the person of, and from the "*instruction*" that would be afforded by, this our pre-eminently learned judge, a jury of the *old* school, were it permitted to "*serve*," would have the benefit, not merely of "*some experience*," but of consummate experience. Now then, after the benefit of such instruction, though received in the course of no more than one single cause, to wit, the cause for the trial of which such jury had been summoned, and was sitting, what would be the utmost advantage derivable to any practical purpose, from any *other*, to wit, any *antecedent* lecture or course of instruction, that could, even from the *same* pre-eminently learned lecturer, have been received? Nothing; no, nothing at all; is the answer I return with the utmost confidence. Where "*the points*" were such, as to be either plain enough in themselves, or made so by the one only lecture which, till this our pre-eminently learned lecturer set up, was ever designed by the constitution for an English jury, his Lordship would accordingly leave the decision to the opinion of these plain men. When these same "*points*" had any such intricacy in them, as entitled these plain men to the benefit of an opinion, formed and ready made for them by this at present consummately experienced, and from the first most incontestably competent judge, he would not refuse it to them. This incontestably competent opinion, would it find them disposed to *acquiescence*? Acquiescence would take place accordingly; and *(in the* Blackstone's *phrase)* "*everything would be as it should be.*" Would it find them disposed to *refractoriness*? It is not by any antecedent experience that they could have been cured of so troublesome a vice.

But (says some one, with the proper expressions of regret) the country (alas!) cannot always enjoy the blessing it possesses at present, in the services of this our veteran and consummately experienced judge: that blessing withdrawn, comes some other Lord Chief Baron, who, though the adequacy of his general legal learning will be sufficiently proved by his situation, will not, with reference to causes of the class in question, be, at the commencement of his first cause, altogether so completely endowed in the article of *experience*. Here, then, upon his Lordship's improved plan, comes the benefit of an *experienced*, and thence of a *permanent* jury: — while the judge is learning to walk, the jury will be able to go alone. But, upon the *old* plan, what experience would there be? — When the blind have no leader but the blind, the consequence is such as need not be mentioned.

I answer — were the argument, which has been shown to be worth nothing, worth ever so much, it could not to this purpose be of any use. At a much cheaper rate than the violating of a vital principle of the constitution, an adequate allotment of appropriate experience might, at all times, be seated upon the bench. "Set a thief to catch a thief," is a coarse proverb, but, on the present occasion, not an uninstructive one. In that division of the court of Exchequer (not to speak of the great law-officers, who might not always regard a presidentship, which has so recently cried *date obolum*, worth the honour of their acceptance,) there will be always some one learned gentleman at least, by whom, in the

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character of licensed *accessary after the fact*, or, in two words, *standing counsel* to the fraternity of smugglers, an ample stock of *experience*—appropriate experience—cannot but have been laid in.

But (replies the learned gentleman on the other side) any rule to this effect would be an infringement upon the liberty of the *prerogative:* that liberty being proportionably trenched upon by every rule, the tendency of which is to secure the appointment of fitter functionaries in preference to less fit ones. It would accordingly be injured, if, in his choice of judges, it were rendered more difficult to his Majesty than it has been, to provide for the accommodation of the family connexions of persons in "high situations."

Prerogative (I answer) is an argument, which is (I must confess) understood never to admit of any direct contestation. But, in the Westminster-hall benches, besides *ten* subordinate seats, there are *four* chief or principal ones: and the prerogative, it is humbly submitted, would not sustain much injury, if, for the superior purpose of private accommodation, it were to apply itself to some one of the many other seats in which no such imperious demand for experience—appropriate *chemico-mechanico-commercial* experience—as that of which, by the unprecedented sagacity of the present Lord Chief Baron, the discovery has so recently been made.

§ 7. *Mischievousness of the Doctrine further developed.*

But the material thing is, that, if his Lordship's sentiments have not been strangely misinterpreted by his words, it is not merely in Exchequer causes, *viz.* Exchequer revenue causes, that, in his conception of the matter, the substitution of a permanent and dependent board, under the name of a jury, to the jury of the old school, ought to be applied; but in all causes to which that antiquated species of jury has ever been applied: in all such causes, without exception, but more particularly in *libel* causes. For, such is the nature of the *reason* thus held up by him to view, that to the application of it any narrower extent cannot surely be assigned. This reason consists of the *ignorance* under which each member of a jury cannot but be supposed to labour, the first time, at least, of his serving in that character: of which ignorance, in his Lordship's view of the matter, the influence—the morbid and debilitative influence—is such, that nothing less than permanence can afford an adequate cure for it.

The "*points*" which he speaks of as being the subjects of this ignorance—of this ignorance to which there exists no remedy but in that "*experience*" which supposes permanence—the actually existing and thus defended permanence—are, not only points relating to the conduct of manufactures, "*many species of manufactures*," but points relating to "*the laws on that subject*," meaning on the subject of these same manufactures.

Unfortunately, in comparison of what is to be found in the *great body* of the laws, the utmost difficulty of comprehension, and consequently of demand for instruction—for *experience* in *receiving* instruction, and consequently again for permanence of situation, the utmost demand created by those particular laws, which have for their subject "*the conduct of manufactures*," is as nothing. In the instance of every part of the rule of action, which has any species of manufacture for its subject, that rule is in the shape of *statute* law—a shape in which it is provided with a determinate set of words for the expression of it. But, in the case of the great body of the law, remaining as it does in the shape, or rather in the shapeless state, of *common, alias unwritten*, law, there exists no such determinate set of words. In all this vast extent, the *two* sources of difficulty, and with it of demand for "*experience*" and permanence—*viz. law* and *manufacture*—are combined in one. Judges, the master *manufacturers: law*, or, what to every purpose—of *suffering* at least, if not of *instruction* or *relief*,—has the *force* of law, law itself the *product* of the manufacture.

In the case of every *other* species of manufacture—of every species of *manufacture* commonly known by that *name*, the master manufacturer viewing, in every misconception that may take place, a source of loss to himself, and having to deal with simple and uncultivated minds in the character of labourers, has for *one* of his objects, and that a *constant* one, the rendering the conception of the *operations* to be performed, and the *instruments* to be employed, in *his* manufacture, as correct and complete as possible, and employs his endeavours accordingly.

In the case of the manufacturers of *judge-made* law, interest being directly opposite, endeavours have of course been correspondently opposite, and results equally so.

Whatsoever may have been the course of *endeavour*—whether *with* or *against* the stream of *interest*—the *result* is, at any rate, equally and indisputably notorious. The demand for *instruction*, and consequently for "*experience*," and consequently for *permanence*, being then so much greater in the cases in which his Lordship was *not* led to bring it to view, than in the cases in which he *was* led to bring it to view, and has brought it to view accordingly, this demand covering the whole field of law in general, and that of *libel law* in particular, what his Lordship's *opinions* and *wishes* are and have been—what his Lordship's *endeavours*, on all favourable oc-

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casions, may with justice be inferred and presumed to have been, and to be about to be — need not surely be particularized.

"This reason of yours — viz. the demand for experience — will you abide by it, or desert it? Desert it, there is an end of the matter, and your conduct remains without excuse. If you abide by it, will you abide by it wherever it applies with equal force? If *no*, there *again* you desert it: — if *yes*, you then mean to carry it, upon occasion, over the whole field of *special-jury trial*, and, in particular, over that part which regards *libel law*. Meaning to carry it over the whole of that field of jury-trial, and, in particular, over that part which regards *libel law*, in packing into a standing board a set of dependent commissioners, habited like jurymen, for service in your own court, that is, for *Exchequer service*, it has then been your meaning to enlist and discipline them for *King's Bench service*."

Such, in conclusion, are the questions and observations that might be addressed to the pre-eminently learned author of this defence, and, as it should seem, not altogether without some prospect of effect, if the forms of the constitution were anything better than a cloak for despotism, and if *responsibility* were, *in fact*, among the attributes of an English judge.

§ 8. *Lawful Improvement — Track it would have proceeded in.*

Now, suppose again, for argument sake, it had pleased this pre-eminently learned judge to "*think it worth while*" to allow to King, Lords, and Commons respectively, their several votes in relation to this business; more particularly to the Commons, whose attention is, or used to be, considered as, in a more particular degree, bespoken for regulations affecting the revenue.

In the House of Commons, besides the committees of the whole house, there would probably have been appointed some select committee for the purpose. Thus appointed, the committee would have set itself to work, and begun with *analyzing* the general conception thus formed by the ingenuity of the learned judge: — decomposing it, they would have resolved it into such particulars as may be found involved in it: — particulars, the number of which is determined by that of the several "*manufactures*, the practice of which has, under favour of that permanence which forms so really useful an attribute of the judicial seats, been brought under the dominion of his Lordship's science. The analysis thus performed, they would, in the instance of each such manufacture, have proceeded to inquire into the truth and accuracy of that general conception, and into the degree of force with which, in each instance, the argument deduced from it, in defence of a select and permanent board, in preference to a fortuitously determined and ever-changing jury, may be found applicable.

Supposing that in each one, or in this or that part of the whole number of these manufactures, the quantity of instruction necessary to the giving the requisite assurance of a right verdict, had respectively appeared so great, that the quantity of time, capable of being allotted to *one* trial by jury, could not with propriety be considered as sufficient for imbibing it, then, and not till then, would it remain for the consideration of the committee, whether, for the obtainment of whatsoever *increased* probability of correct judicature appeared capable of being obtained by the proposed substitution, it would really be worth while that an innovation applying to so important a part of the constitution should be introduced.

Supposing this question determined in the affirmative, *then* would come upon the carpet, for the consideration of the committee, the question concerning the organization of the permanent *board* or *bench* of judges, by which alone, in the sorts of causes in question, correct justice is, by the supposition, capable of being administered.

Satisfied, let us even suppose then, that, by a jury, justice in this behalf was incapable of being done, would any such determination be formed by them — would any such idea be so much as proposed to them, as that of giving the name of a *jury* to a body of men in which it had been predetermined that none of the properties of a jury should be found? Would they — these representatives of the people — bring themselves to attempt putting any such imposition upon their constituents? I hope, and dare believe, they would not. Deceit like this belongs to none but a class of men trained up in the application and formation of that art and science which is from beginning to end the art and science of imposture.

Such as above, or something like it, is the course taken by King, Lords, and Commons, when to them it seems good to take upon them to make laws; to *make* laws, taking, as they must be content to do, their chance for seeing, or, if it be more convenient to them, for avoiding to see, those laws overruled: — overruled, indeed, but happily always by men of transcendent science, by whom, without the trouble of studying it, the business of legislation is so much better understood.

But King, Lords, and Commons, are a dull and slow-paced set; — determining nothing about *facts*, till after they have been poring over, as well as prying into, facts. How much more easily are these things managed by a learned judge! When, at any time, he "*thinks it worth while*" to make a law, it need cost him but a *word:* nor is it necessary even to that word to contain *thought*, or any such heavy matter, at the bottom of it.

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Another thing might, in this case, be affirmed with some assurance: *viz.* that were parliament, at this time of day, to think fit to appoint for this (not to speak of any other) purpose, instead of a jury, a permanent board, — in that case, into the organization of any such board, no such barbarous and flagitious feature would now be introduced, as should put it into the power of any *one* dishonest member to overrule, by his own single will, the opinion, and consequent will, of *eleven* honest ones.

Parliament would, in this case, do in this particular, as it did in the case of the judicatory established by the *Grenville act:* which judicatory cannot be defensible, but upon the supposition that what, in the case of jury-trial, is called *unanimity*, is indefensible.

CHAPTER V.

SPECIAL JURY CORRUPTION — DEVICES BY WHICH IT WAS PROTECTED.

§ 1. *Device* 1 — *Leaving to Judges a covert ground for refusing to apply the act.*

WE come now to account for the flaw, observable, though, by our *triad* of learned persons, not observed, in the reforming statute (3 Geo. II. c. 25) — I mean its inapplicability to the principal, the new-invented, and most conveniently-framed seat of corruption, *viz.* the *special* sort of *jury*.

So far as concerned the trial of causes, the use, and the only use, of a jury was, as there has so often been occasion to observe, the operating as a check to arbitrary power in the hands of judges. This intended and supposed check, by the invention of the sort of jury called a *special jury*, and to the extent of the application capable of being made of it, they had already, and before the passing of this act, given to themselves the faculty of converting into an *instrument:* the determination of the individuals of whom, in the instance of this novel species of jury, the tribunal should, on each occasion, be composed, being taken by them *out* of the proper hands, and virtually *into* their own, *viz.* by being vested immediately in the hands of the permanent officer, whom, on that account, there has been such frequent occasion to designate by the appellation of *master packer* — their own dependent and subordinate.

Abuses respecting the appointment of jurors — of jurors of all descriptions, and for all occasions — corruptions too flagrant to be any longer endured in silence — having engaged at length the attention of the legislature, the necessity of doing something had, to the conviction of the learned fraternity, become inevitable.

In this emergency, it became their manifest interest, and consequently their care, so to order matters, that whatever it should be found necessary to do, or suffer to be done, for the prevention of abuse in the appointment of juries, should be confined to common juries, and should not, either by design or through inadvertence, be extended to those juries of their own nomination — *viz.* to special juries: but that, on the contrary, every pretext and every opportunity should be embraced, for giving, to the application of so convenient an instrument, every extension of which it might be found susceptible.

At the same time, this invention of their's being incontestably repugnant to the universally-recognised principles of the constitution, it became a matter of prime importance, that, of whatsoever should be done for the extension or even for the preservation of it, the true nature and operation should be kept as effectually concealed and disguised as possible.

The remedy, therefore, whatsoever it might be, was to be made to possess two characters; *viz.* an *ostensible* one, and a *secret* one: in its *ostensible* character, it was to bear upon all juries without distinction: in its *secret* character, it was so to be contrived, that, if at any time any untoward accident should happen to call for its being carried into execution and effect, it should, in the case of a *special* jury, be found inapplicable: which sort of jury should consequently remain the seat of corruption and abuse in every convenient shape, notwithstanding any success which, in the instance of the ordinary and vulgar sort of jury, might have attended the measures taken for the extirpation of those mischiefs.

For this purpose various devices, part old part new, were set to work. An old established one was — the rule they had long before contrived to establish — *viz.* that *the crown* (*i. e.* as many members of government as could contrive to get their interests included under that name) was never to be considered as bound by any act of parliament, unless expressly mentioned in it, which of course all persons interested would, on each occasion, take care that, if possible, it should not be.

By this rule alone, a great part of the design was already accomplished to their hands; for, by this rule alone, special juries, with the benefit of an exemption from the obnoxious restrictions, which, under the proposed new law, operated as a bar to sinister choice and permanence, might have been preserved to all causes, in which, according to the established forms, *the king* was nominally a party.

But by this rule, if alone, the benefit of the exemption would not have been extended to all causes to which it should happen, to have been brought under the cognizance of special juries. Under this cognizance they had already, of their own authority, besides the above-mentioned *criminal* and other sorts

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of causes, brought in general all those which, in contradistinction to criminal, are termed by them *civil* causes, comprehending together almost all sorts of causes: and to this extension they had the assurance to ask, and the good fortune to obtain, the confirmation of the legislature, in and by this very act. (3 Geo. II. c. 25, § 15.)

To complete the imposition, it then became necessary to employ a further contrivance, for concealing from non-learned eyes the completeness of the exemption meant to be established.

The way in which they managed it is this: — In the case of a *special jury*, the jurors, instead of being determined as in the case of a common jury, were, as there has been such frequent occasion to observe — were, as they always had been — "*nominated*," as the word is in the books of practice, by the officer of the court — the *master*. The *master*, then, for *one* at least, if not he alone, would have been *the*, or at least *a*, person, to whom, had the corrupt practice been in this case meant to be prevented, the prohibition would have been addressed.

But to apply to this branch of the corruption — to the branch which was under their own management — any sort of remedy, was no part of their intention. Care was accordingly taken, that, to the effect in question, neither to this officer, nor to any other officer, by the staying of whose hand that part of the plague which was of their own nursing would be staid or checked, should the prohibition in question, or any prohibition, be addressed.

In the case of a *common* jury, the sheriff, as above observed, was the person by whom, out of a much more numerous assemblage, supplied to him under legal rules, by other hands (in the first instance by the constable of the several townships) the choice was made. Corruption having risen to such a pitch, that the cries of the public had become troublesome, it was become necessary that the mischief should, in some quarter or other, receive a check.

Common juries were the sort of juries in whose instance, in comparison of special juries, the preservation of the faculty of corruption was, to the purposes of the judges, and the other lawyers, of least importance: the sheriff, in whose hands the choice of jurors of this class was more immediately reposed, was an officer, on whose obsequiousness, regard being had to his impermanence, and comparative independence, they could not place any such reliance as upon that of the *master*, their own permanent subordinate.

The *sheriff*, it was accordingly determined — the sheriff, and he alone — should be *included* in the prohibition: *the master*, it was determined, should *not* be included in it.

Such being the determination, what was the contrivance employed for carrying it into effect? It consisted in the employing of such words, and one word in particular, *viz.* the word *return*, as, while to an unlearned eye they would appear to bear, alike in every case, upon the officer, be he who he might, upon whom, on each occasion, the composition of the *reduced occasional list* (*see above*, Part I. Ch. IV. § 3,) and thence, as far as depended upon him, that of the actually *serving list* (*See above*, Part. I. Ch. IV. § 3) depended, would be in case of litigation, and in the meantime, by learned and interested eyes, would be seen to be, in respect of the technical signification attached to the word *return*, incapable of bearing, in the case of a special jury, upon any *such* person, or in effect upon any person, at all: and thus it was that, for want of a person on whom the words in question could be found to bear, the supposed remedy was, in that case, to be rendered altogether inapplicable and without effect.

Such accordingly will be found to be the virtue of that convenient and aptly chosen word — the word *return*. The sheriff was and is the person, by whom, in all cases, what is called the *return* was and is made: — the *return*, *i. e.* the list of the persons summoned, or at least therein said by him to have been summoned, to serve on the occasion in question as jurors: which list was and is, in all cases, to be given in to the officer of the court.

The difference, in this respect, between the two cases, was and is — that in the case of common jurors, the persons chosen for jurors, were and are, a number of persons greater than 24 (the number contained in the case of a special jury in the *reduced occasional list*:) and so much greater than 24 as to constitute an aggregate out of which, in the case of a common jury, the *actually serving lists* for any number of causes, tried, as belonging to the county or other district in question, on the same *occasion* (viz. at the same assizes, sittings, or sessions,) are to be taken: and these are, all of them, of the *sheriff's* own choosing, as above: in the case of *special* jurors, they are chosen by the officer of the court — the *master* — the *master packer*, out of a list furnished to him by the sheriff, being the same "*gross list*" that the sheriff himself has to choose out of: and the master having pitched upon the 24, sends an order, called a *writ of distringas*, inclosing the list (called the *pannel*) to the sheriff, who has nothing to do but to summon the persons contained in that same list, and thereupon, in his answer, called his *return*, to declare and certify his having so done.

Let it not for a moment be supposed, that on this occasion, in framing for themselves this *valve of safety*, on the part of these scientific and ingenious operators, any such cause

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as *inadvertence* had any share. *Return* is the word by which they found the choice designated when made by the sheriff: — *nominate*, when made by the master, the officer of the court. That the *sheriff* never is said to "*nominate*" jurymen — that the *master* never is said to "*return*" jurymen — these are matters, neither of which could, to these learned persons, or any one of them, applying their thoughts to the subject, for a special and to themselves highly important purpose, have for a moment been a secret. Had it made any part of their intention, that special jurymen (the rich and well-paid jurymen, to whom alone the exemption could have been of no use) should stand exempted from the over-frequent service, as well as common jurymen (the comparatively poor and unpaid jurymen, to whom alone the exemption could be of any use,) in this case, to the word designative of the act of the *sheriff*, by whom *common* jurymen are chosen, they would have added the word designative of the act of the master, by whom *special* jurymen are chosen: — to the word "*return*," when employed for the description of the act meant in this case to be prohibited, they would have added the word "*strike*," or the word "*nominate*." But their design being the reverse of this, such accordingly was the language employed by them in the execution of it. To the "*return*" — the *reiterated* return — of jurors, in the case of *over-served* jurors, the prohibition they framed was accordingly confined: to the *nomination* — the *reiterated* nomination — of jurors in the same case, the prohibition was not extended.

To make it clear, upon occasion, that, in the provisions against package, permanence, and corruption, it could not have been the intention of this act to comprehend the case of special juries, another argument was provided.

When a prohibition is addressed to a man, care is usually taken, that, in some way or other, he should find a *motive* for conforming to it. The operation meant to be restricted being the act of the sheriff, and he the person to whom the prohibition is accordingly addressed, to constitute such motive, an eventual penalty, bearing upon the conduct of the sheriff, is appointed, and denounced accordingly in the act: to the master, of course, no such, nor any other eventual penalty, is denounced.

Now, from this omission, if the prohibition is understood to apply to the case of a special jury, results a sort of incongruity, by which the intention of the legislature, under the guidance of these learned persons, to exempt the *master packer's* corps of dependent special jurors from being disbanded along with the common jury corps, is put still more effectually out of doubt. If in the prohibition, with the annexed penalty, put upon the official act, of which the service of over-served juries — viz. the too frequently reiterated jury-service in the instance of the same individual, would be the result — if in this prohibition special jurors are to be considered as comprised, one consequence is, that the sheriff would, in case of prosecution, have to pay the penalty for an act done in obedience to orders made by the master, and contained in the writ, called a *distringas*, issued by authority of the court: for, as hath been seen, it is, in the case of a *special* jury, by the *master*, each time that the twenty-four persons to be summoned by the sheriff to serve on that jury are *nominated*, and as such included in the writ, as above, sent by him to the sheriff. Now then, to make a supposition, instead of leaving, between their times of service, the interval appointed by the *act* in the case of common jurymen, let the master, in the case of two special juries who are to serve on two immediately following occasions, compose the two lists altogether of the same persons. This, if the prohibition in question is to be understood as meant to comprehend special juries, is a direct transgression against the act.

On this supposition, though it is by the master (the officer of the court) that the offence is committed, it is not by the master, but by another person, the sheriff, that the penalty is to be paid. Such injustice, it would naturally be argued, cannot reasonably be supposed to have been the intention of the legislature. Therefore, concludes the argument, be the remedy what it may, it was no part of the intention of the legislature, that it should be applied to the case of *special* juries. And the inference being, if not strong enough to impose an obligation upon an unwilling judge, quite strong enough at the least to afford a sufficient warrant to a willing one, the eventual inapplicability of the remedy to the case in which it is most wanted, may, without much violence done to probability, be concluded.

From these provisions against package and permanence, provisions which ought in reason to have applied in common to both sorts of juries, and which accordingly were *in appearance* made applicable in common to both sorts, the sort called a *special jury* was thus *in reality* exempted: — which was the thing to be done.

§ 2. *Device 2 — Rendering it unadvisable for a Sheriff to resist the Packing.*

Possessed with the now antiquated notions about the importance of real jury trial to liberty, a meddling sheriff (it might at that time of day have been apprehended) might at one time or other start up, who, in the case of special juries, observing juries packed, and

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formed into a standing corps, in opposition to what might appear to him to have been the intention of the act, might, in relation to this most important application of it, feel disposed to use his endeavours to give effect to it.

For the repression of any such quixotism, it was expedient that provision should be made: and provision was made accordingly.

If, in the application of the act to special juries, he would have greater cause of fear in the event of his using his endeavours to give effect to it, than in the event of his contemning it, the conclusion was — and, it must be confessed, not an unnatural one — that no such endeavours would be used.

Contemning the act (it was accordingly contrived) — contemning the act in this particular, and thus leaving the system of package and permanence undisturbed — he would run no greater nor other risk, than that of having to pay a limited, and that at the utmost a minute, penalty: — a petty sum not exceeding £5 (3 Geo. II. c. 25, § 4.) *Supporting* the act, he would, in the instance in question (for so also it was contrived) find himself to be committing an offence — an offence called a *contempt of court* — and thereby subjecting himself to a mass of punishment altogether unlimited, and which, taking into account costs of defence, whether unsuccessful or successful, could not but amount to many times the amount of the penalty in the other case, as above. For, if the master, as above, puts into a list of special jurors (a list settled by him as above) any number of *over-served* special jurors, the order, given thereupon to the sheriff, to return those along with the other special jurors, is *a writ* or *order of the court*, disobedience to that writ or order an offence called *a contempt of court*, and the punishment inflictable for that offence, imprisonment for a time altogether unlimited, with or without nobody knows what beside.

At the worst, what was made clear was, that in leaving the act, in this respect, in a state of nullity, and the system of package and permanence undisturbed, he could not have anything to apprehend. Called to account (suppose him in any way, though by whom should he be called to account?) for having returned this or that over-served special-juryman: "The court," he would have to say, "sent me a list of twenty-four persons to be summoned and returned by me to serve as jurors upon this cause, and this man's name was upon the list: — how, then, could I have done otherwise? Had I omitted him, the court would have punished me as for a contempt." Thus much aloud. Continuing the conversation to himself — "The king in parliament," he would naturally say, "may, for aught I know, have forbidden me to return this man: but what I am sure of is — that my Lord Chief Justice has commanded me. Disobeying my Lord Chief Justice, the king (I am sure) would not protect me: — disobeying the king, my Lord Chief Justice (I have reason to think) will protect me. 'No man can serve two masters;' two oppositely-commanding masters: a prudent man will serve the strongest: — my Lord Chief Justice being the strongest, my obedience is for my Lord Chief Justice."

§ 3. *Device* 3.—*Concealing the Power of Nomination given to the Master Packer.*

Another exertion of lawyercraft may be seen in the care taken to throw a veil of concealment over the arbitrariness of the power exercised by the master in the nomination of special jurors. It is by him alone (as we have seen) that the "*nomination*"—the choice — of the forty-eight is made. Whatsoever appearance of judicial audience and impartiality it might, in the year 1777, and in a case of so much expectation and publicity as Mr. Horne Tooke's case (*See* Part I. Ch. VIII. p. 96,) and under a judge no less remarkable for timidity than for arbitrariness, have been deemed advisable to assume, at this time of day, such is the progress that has been made, this arbitrariness may be seen stated without disguise in the *books of practice* — books written by lawyers for the information of none but lawyers, and without any apprehension of any such jealous eye as, by accident, might be cast on the business in the House of Commons. In the act 3 Geo. II. c. 25, § 15, how is the description given of this operation worded? Answer — in such manner as to convey the conception, that the choice was made somehow or other by somebody else, and that *auspices* were all that were contributed on this occasion by this judicial personage. — "Required upon motion as aforesaid"... (says the act) "to order and appoint a jury to be struck *before* the proper officer of each respective court." *Before* is the word: and false as is the conception that will naturally be conveyed by it, yet so artfully is it chosen, that no charge of impropriety would be found to attach upon it. *By* this proper officer, it is true, are the forty-eight nominated in the first instance: but then the jury is not said to be *struck*, that is, the determination of the individuals that are to compose it completed, till, out of the forty-eight, twenty-four are struck off by *other* hands: viz. twelve by the attorney on each side.

By, and not *before* (it may indeed be observed,) is, however, the word employed in another part of this same act (§ 17.) But, *nemo mortalium omnibus horis sapit:* and, as every act of parliament is, or is liable to be, a *pasticcio*, nothing is more likely than that the clause with *before* in it, should have been the work of *one* hand, that with *by* in it, of *another*.

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§ 4. *Learned Advice given accordingly to Sheriff Phillips.*

Thus it was, that this act, which, at a time of ferment, and in the view of allaying the ferment, was, in show and pretence, provided in the character of a check to corruption in the case of *jurors* in general, special as well as common, was at the same time, in the case in which the mischief of the corruption was at beyond comparison the highest pitch (being the case wherein the interest which its pretended extirpators had in maintaining and increasing it was also at the same high pitch,) converted, as in the case of the lately-exhibited remedy against *parliamentary* corruption — converted, by suitable management, and with the happiest success — into a means of not only perpetuating, but aggravating the disease.

Of the state of things here depicted — of the nullity of the power of parliament — of the real supremacy of the judges — of this state of things, the living oracles, to whom Sir Richard Phillips, as above, had, at different times, betaken himself for advice, were, both of them, as will be seen, duly sensible.

This sheriff, being one of the speculative kind of men above supposed — ignorant, as all such men are — ignorant of the real state of *existing circumstances* — had been amusing himself with the fancy that *King George* is our king: that in consequence, disobeying King George, a man would be in peril, and that to obey *him* was the way, and only way, to be safe.

These learned persons knew, both of them, better things. "Your *King George*," said they, "(to let you into the secret) is *King Log:* jump upon him, do anything else upon him you please.—*King Ellenborough*, *King Mansfield*, *King Macdonald*, these are your *real* 'kings:' these, should you venture to disobey but the least of them, you will find him a King *Stork*. As to your *King George*, to appeal to the laws of that *nominal* king, in justification of an act of disobedience committed against the orders of any of these *real* kings, — doing so, you would but make bad worse: doing so, you would but aggravate disobedience by '*contempt:*' you might as well appeal to *Bonaparte*."

Such was their advice: and very *good*, and, as the Lord Chief Baron says of it, "*perfectly just*" advice it was. The language in which they gave it was of course their own language —their own branch of the *flash* language: but the above is the honest English of it. As for the speculatist, the reformer, he found means to understand it, notwithstanding his ignorance: accordingly by these lanterns were his feet directed, as well as his paths lighted.

As to the *Lord Chief Baron* — so little in use have he and his learned colleagues been, to consider an act of parliament as anything, when their practice or their pleasure has been contrary to it, to *him* it was all the same whether, in the case of special jurors, the package and the permanence had or had not been prohibited by the act: the exemption provided in that case having been a covert one, it had escaped his observation, and he determined accordingly to conduct himself as it seemed to him, in disobedience to the law.

But to the sheriff, who, had he taken upon himself to give effect to what seemed to him to be the intention of the legislature, would have had to expose himself to the resentment of the judges, it was matter of serious anxiety to endeavour to ascertain what support he might promise himself from the letter as well as from the spirit of the law. The learned framers of this law, not having as yet attained for themselves, nor daring to promise to themselves, for their successors, any such complete and dauntless assurance, as hath now been declared by their existing successors, had made provision of their covert exemptions and loop-holes, as above: and of these loop-holes, our intended *Curtius*, the reforming sheriff, though he did not receive a perfectly complete or correct draught, received an intimation sufficiently instructive to save him from leaping, to no purpose, into the gulph into which he had been prepared to throw himself.

Thus in the way of useful instruction — instruction which, howsoever speculative, may at any time be made to lead to a practical purpose—the quantity of written matter unavoidably expended upon this contrivance in the art of packing may be turned to as extensive an account as possible. I would recommend it to your consideration, gentle reader, in the character of a sample of the mode in which, in matters of law, the public has been always served, and may always expect to be served, till by such service the destruction of society is completed, so long as, according to the existing order of things, it continues in the line of legislative penmanship to be served by lawyers, meaning fee-fed lawyers: it will continue to be served as hitherto it has been served — always with the same honesty — always with the same views — always with the same effect.

§ 5. *Special Jury System—just suspicion entertained of it.*

That all the artifice that could be mustered for the occasion was not more than the urgences of the case required, may be collected from the particular recital prefixed, by way of preamble, to this very clause: — a recital from which it appears, that the indiscriminate extension of the special jury system to all causes, at the pleasure of the party on either side of the cause, had not been regarded altogether without distrust and opposition.

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"And whereas some doubt" (says that preamble, 3 Geo. II. c. 25, § 15,) "hath been conceived touching the power of his Majesty's courts of law at Westminster, to appoint juries to be struck *before* the clerk of the crown, master of the office, prothonotaries, or other proper officers of such respective courts, for the trial of issues depending in the said courts, without the consent of the prosecutor or parties concerned in the prosecution or suit there depending, unless such issues are to be tried at the bar of the same courts." Thus far the preamble: and then comes the enacting part, still preserving the word *before*, and giving to the party on either side the power to force upon his adversary the sort of judicatory thus corrupted.

As to "*doubt*," if we may believe what is said in the report of a case determined in the year 1737, about seven years after the passing of this act, there could be no *doubt* in the case: the contrary to what is here insinuated was true beyond all doubt. No more than about four years before the passing of the act, a search had been made in this view: *in* thirty years then last past, that is, from about the year 1695 to about the year 1725, no instance of the ordering a special jury without consent of parties on both sides had been found: nor is it said that any instance had been found *anterior* to that period. Notices of the existence of such a power had indeed been now and then thrown out, but which, if that statement be believed (and no reason can be found why it should not,) were without any foundation either in regulation or in practice: were thrown out, and not being true in fact, it seems difficult to imagine with what view they could have been thrown out, unless it were with the view of paving the way for this statute.*

* *Wilks against Eames.* Andrews, p. 52, Mich. 11 Geo. II. anno 1737. The court said, "that though it was not usual, before the said act, to grant special juries without consent, yet in some instances, and for special causes, it was, and might be done: . . . And Lord Chief Justice cited the *King and Burridge, Pasch.* Geo. [I.] 10, when upon search it was found that no special jury had been granted for thirty years then last past without consent; and the Lord Chief Justice Pratt was *then* of opinion, that the court might grant a special jury without consent, but the other judges differed;" *i. e.* were of opinion that the court could not grant a special jury without consent.

From this it seems, that at both periods the Chief Justices knew what they were about, and accordingly invented pretences for thus forcing in the special jury system: but that, in *Pratt's* time at least, *viz.* anno 1725, the *puisnes* were not in the secret: inasmuch as *they* opposed the extension thus endeavoured to be given to it.

From this it may be seen that a special jury, in the character of a subject and instrument of package (unless before this time the crown lawyers assumed, and by the judge were permitted, to exercise a right of commanding a special jury in crown causes, as would naturally be the case) as well as a source of increased lawyer's profit, took its rise from this act: and, as well in the character of an *occasional* source of *corruption* as in that of a *constant* source of lawyer's profit, it has already been seen how valuable an engine it has proved in the manufactory of abuse.

In the character of an instrument applicable to the purpose of *corruption*, our estimate of its value may receive some assistance from a circumstance mentioned in the same Report. In "the case of the corporation of *Bewdley*," the trial being at *bar, twenty* guineas a-piece, it appeared, had been given to each juror. Nor would the enormity of the sum have transpired, but for an application made by the losing party for what is *there* called "*lowering it*," which the court did: *viz.* to *five* guineas, *i. e.* forbore to oblige the losing party to pay any more than five guineas, not obliging him to pay the *twenty;* for, as for taking out of the pocket of each juror fifteen guineas out of the twenty he had received, that was altogether out of the question: — that was what could not be done. The money was already in their respective pockets; and there was neither *statute law* nor *judicial practice* that could have furnished so much as a pretence for making them disgorge it.

In the same case, in speaking of the quantum of the extra allowance given to these well-selected assessors, an observation made by *Strange, Solicitor-General*, is — that "though the practice is to pay them more than to common jurors, this is mere matter of *generosity*, and ought not to be reimbursed by the other (meaning the losing) party."

All depending on *generosity*, and the *crown*, *i. e.* its servants, and they alone having it in *their* power to be *generous*, and without bounds, as well as without any expense to themselves, it may be imagined what sort of a chance *an individual* would have, under a set of jurors, all named by this *one party*, possessing, and all along exercising, the power of either rewarding them, at the expense of others, to an *unlimited* amount, or *not* rewarding them *at all*, according as they behaved.

The crown, had it or had it not a special jury at pleasure, and not depending on the consent of the party on the other side?

A circumstance indeed that contributes to render it probable, from the first invention of special juries, the *king*, *i. e.* the servants of the crown, never failed to have a special jury of this sort for asking for, is — the care which, at the early period above mentioned, *viz.* the beginning of the reign of *King William*, was taken, that the faculty of striking out the 12 out of the 48 should *not*, on the part of either party, be exercised, without its being specially *applied* for, and on application *ordered*.

And so lately as in the time of *Lord Mansfield*, it is stated as a *rule*, that when the solicitor omits to attend after notice, the master in K. B. may strike the jury *ex parte*. *Cowp.* 412. *Rex v. Hart.* Hilary, 16 Geo. III. B. R. 1776.

In such cases as were left to a common jury,

§ 6. *Harmony between the Astutia of* 1730, *and do. of* 1808.

We come now to an observation, which brings the consideration of the *so long ago*

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enacted *statute* within the limits of the *present* epoch: I mean the use which, on the occasion in question, appears to have been made of it, by the *Lord Chief Baron*, with the privity of course, and consent, all along, of his learned and reverend colleagues.

The deficiency by which, in respect of the clause prohibitive of permanence, the act *was* and *is* rendered inapplicable to the subject of *special* juries, had probably been observed and *understood*, but was not thought fit to be *indicated:* it was not to be indicated — why? lest peradventure, attracting *parliamentary* notice, it should be *supplied*.

But, to the *sheriff*, in pursuance of the *advice* that had been given him, *viz.* from the *temple*, it *might* have happened to bring the question before the *court*, *viz.* in the mode, in and by that advice recommended. If so, *his lordship* and *their lordships* were ready for him. On arguing the matter on the ground of the statute, its originally intended inefficiency as to this point would have been brought to light. Though not perhaps through *malice*, the *would-be reformer* would have been found a *trespasser:* and, in addition to *costs* (costs *got* by him in the *negative* sense,) in addition to such his costs, accompanied with a reasonable dose of contempt in the form either of *avowed contempt* or *pity*, he would have got his *labour* for his pains.

Against the hypothesis thus advanced, this or that passage may be objected, in which the *prudence* of the *serpent* does not appear quite so conspicuous as the *simplicity* of the *dove*.

But should the *fact* be even admitted, the *inference* has no need to be admitted along *with* it. In a line of action to which a man is *accustomed*, the most consummate skill is not incompatible with equally consummate awkwardness in a line to which he is *strange*.

The line to which an English *lawyer*, and in particular an English *judge*, is *accustomed*, is that of making the most of the abuses, of which the *common*, *alias unwritten*, law, and in particular that branch of it which regards *judicial procedure*, has been made up, *viz.* by the hands, and for the benefit of his predecessors: of making his *advantage* of them on *every* occasion, of defending them as often as it may happen to them to be *attacked:* opposing every *effectual* remedy, and, as often as remedial measures cannot be kept out altogether, infusing, into such as are forced in, as large a proportion of insufficiency and mischievousness, as it may be found possible and prudent to introduce.

The line which is altogether *strange* to him, is the line of *honest* and *beneficial* legislation: including the *abolition* of such mischievous and inefficient arrangements as may happen to have taken place already as above. Accord-

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that is, in causes the importance of which was not sufficient to excite any interest in the bosoms of the judges or their connexions, chance was the instrument they saw directed to be employed for the reducing the number on the *gross list* to twelve — the number adapted to the *serving list*. Had *justice* been the object, here then was a *principle* and a *precedent* to have pursued. But in cases that were deemed worth their attention, *these* ministers of justice knew better than to trust in any degree to *chance*, what might be *secured* by *prudence*.

In the case in *Cowper*, before *Lord Mansfield*,[a] a curious enough circumstance is the carelessness, real or simulated, of the judge, in regard to the person by whom the *twenty-four* should be struck out, in case of a refusal on *one* side (in the case in question it was on the side of the *defendant*) to strike out the twelve — the right of striking out which, according to the practice, belonged to *each* side, and consequently to *that* side.

What the *reason* of the case plainly enough required was — that the party attending for the purpose (in the case in question, the *solicitor* of the *crown*) should exercise *his* right of striking out *his* twelve, and *then*, the *defendant's solicitor* making *default*, the right that belonged to *him* should, *from necessity*, be exercised by the supposed impartial officer, the *master*.

In *this* case, both on the part of the *counsel* by whom the motion is *made*, and on the part of Lord Mansfield, the judge, by whom the prayer of the motion is *refused*, an assumption made is — that, in case of such default, it belonged to the *master*, and him *alone*, to strike out the whole four-and-twenty: that is, twelve for the defendant who made *default*, and twelve for the *solicitor* of the *crown*, who made *no* default.

In this case had there been any real distinction of *interest* and *feelings*, nothing could have been more palpably partial and iniquitous, than to put it into the power of *one* party, by thus wilfully making default, to deprive the *other* party of his right. Yet that apparent injustice — and this too to the prejudice of the *crown* — was committed. Why? Because between the servants of the crown in the *judicial* line, and the servants of the crown in the *agency* line, the understanding was so entire, and because amongst them it was so perfectly well understood, that, so far as concerned the interests and wishes of the servants of the crown of all descriptions, whether the person by whom the striking out were performed were the *master packer* or the *crown solicitor*, the *effect* would be just the same. Thus it is, that to any *scrutinizing eye* the *secret*, had there been any, would have been betrayed. But there was no secret in the case: and, as to any *scrutinizing eye*, there was none such within sight.

[a] "*Rex v. Hart, Esq. Cowp.* 412. Friday, Feb. 9, 1776.

"Mr. Davenport moved for directions to the master to strike out twenty-four of the special jury *ex parte*, in case the defendant and his agent should omit to attend the master's appointment. The motion was founded on an affidavit of three appointments having been made, and their declining to strike out *till a day should be appointed for the trial*. . . .

"Lord Mansfield was clear the master might do it without any direction from the court; and declined giving him any in particular, but had no doubt he might do it now just as if he had proceeded last term; . . . ."

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ingly, it is not by *mere ill will*—the immediate result of adverse interest—that a true-bred English lawyer, bred in the school of *Coke* and *Blackstone*, is prevented from doing anything *well* in the line of honest and beneficial legislation: it is moreover by genuine and unaffected *dimsightedness* and *awkwardness*.

Even though the task to be performed were of no stranger a complexion than that of making a *pair of shoes*, the most expert as well as learned and eloquent *advocate* that ever pleaded at an English *bar*, or *judge* that ever sat upon an English *bench*, would probably find it matter of extreme difficulty to make with his own hands any such article. But supposing the task to be the making of a *code of laws*, in such case, even though by some strange revolution or metamorphosis he were on a sudden to become personally reconciled to it, he would find much less difficulty in the making of a pair of shoes than in the making of any such *code of laws* as should prove to be (supposing such to be the quality required to be given to it) a really useful instrument in the hand of impartial, undilatory, unvexatious, and unexpensive justice. In the making of the shoes, nothing more irksome could have happened to him than the employing, in so relatively useless and unprofitable a work, the necessary quantity of labour and time: from the very first stitch to the very last, he would not have found himself under any such unpleasant necessity as that of violating any maxim or opinion he had been accustomed to regard with affection and respect, or acting in opposition to the interests, opinions, or *feelings* of any of his friends. In the making of the beneficial body of the laws, he would not only have to lament, at every stroke of the pen, the misapplication of so much labour and time, but at every other line he would feel himself running counter to some such favourite maxim or opinion, as well as running counter to the interests, diminishing the profits, disturbing the ease, lowering the reputation, galling the pride, and, in the words of *Lord Ellenborough's libel law*, "*hurting*," "*prejudicing*," "*injuring*," and "*violating*," the "*feelings*" of the companions of his youth, and most familiar friends.

He would *find* himself, or, as now we say, *feel* himself, running counter to that which, in lieu of the once universally pursued, or professed to be pursued, but now antiquated and exploded *end* and *object*—viz. *the greatest happiness of the greatest number*, has now of late openly, deliberately, and in black and white, been avowed and acknowledged as and for the permanent end and object—if not of all government, of the government of his Majesty's *most favoured set of servants*—viz. the preserving from "*hurt*," "*prejudice*," "*injury*," "*violation*," and every other such unpleasant accident, the feelings of "*great characters*," in "*high situations*."*

CHAPTER VI.

LEARNED ADVICE FROM THE TEMPLE.

LEARNED advice, in the shape of a letter from the *Temple*, having, on this occasion, borne no inconsiderable part in the business, viz. partly as having afforded guidance to the sheriff, partly as having helped to afford legal notice to, and been honoured by the declared approbation of the Lord Chief Baron, the

* "The Duke of Portland.... informed me .... that your Lordship thought a change in Lord Castlereagh's situation in the government desirable,—provided it.... could be reconciled to Lord Castlereagh's *feelings*. The Duke of Portland.... told me that hopes were entertained .... of facilitating a general arrangement, in which *a complete change in the war department* might be effected consistently with Lord Castlereagh's *feelings*." See, in Cobbett's Register, Dec. 2, 1809, the Letter of *Mr. Ex-Secretary Canning* to *Earl Camden*, *Lord President of his Majesty's Council*, in which the conduct of a war on which the fate of the human species depends, is, for near six months together, *viz.* from 2d April to 20th September 1809, in the minds of the minister who writes this letter—the minister to whom this letter is written—and the other ministers in general, stated and shewn to have been a secondary consideration: the *primary*, and during that whole time the *prevalent*, consideration being the *feelings* of a single individual: that individual, a minister whose unfitness for such his employment had during all that time been recognised, *viz.* either by every one, or by almost every one of his colleagues:—and such colleagues!

Now in any *such* cabinet (not to speak of *contingent ones*,) suppose a proposition brought forward for the making of any such code of laws, as should be subservient to the purposes of *cognoscible*, *impartial*, *undilatory*, *unvexatious*, *unexpensive justice*. On what circumstance would the reception given to it depend? Answer—on its being capable of being made "consistently with," or "of being reconciled to" the "feelings" of the great character whose seat is at the head of the law. Were it to happen to the rule of action to be cognoscible, impartial, and in all its other points, in the highest degree, or in any higher degree than at present, subservient to the greatest happiness of the greatest number—were the recourse to it rendered in any degree less dilatory, vexatious, or expensive, than it is at present—this would, in all its points, be a result opposite to the interest of that great character in all its points—*viz. money*, *power*, *ease*, *reputation*, *vengeance*, with their *et cæteras*: also to that of the several learned, and noble and learned, and other *great characters* his colleagues, and other his friends. Such is the prospect which the *law* has of seeing itself well *conducted*. As to the *war*, had *that* been *well conducted*, the result, so far from being in any point *opposite*, would in every point have been, and in a high degree, subservient to the interests of the great character by whom it would have been so conducted.

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reader will probably expect to see it laid before him *here*, instead of his being sent in quest of it to another publication.

I proceed, therefore, to exhibit a copy of it, subjoining, in the form of *notes*, a few observations, of the propriety of which the reader will judge.

"TO MR. SHERIFF PHILLIPS.

"DEAR SIR, — I agree with you in thinking, that the clause referred to in the inclosed act of parliament applies to *special* as well as *common jurymen*;* *for* if it be inconvenient† for the latter to attend oftener than the act requires, it must be much more so to the former, on account of their *rank* and station in life.‡

* *Applies to special.... jurymen.*] This is the clause forbidding the summoning and returning of over-served jurymen: this the *passage* which drew (as we have seen) from the Lord Chief Baron the avowed persuasion, that the practice he had so long been pursuing, and was then defending, was a practice meant to be prohibited, and prohibited accordingly, by parliament. But that, in this persuasion, as well the learned judge, as the learned counsel whose observations he found so "*perfectly just*," were perfectly mistaken, has, in the last preceding chapter, been shown at large.

† *If inconvenient for the latter to attend .... much more to the former.*] Inconvenient to a guinea-fed juryman to attend oftener than the act requires! About as inconvenient as to this learned gentleman it is to have too many briefs. When the briefs crowd in too thick upon him, he returns the overplus: when the summonses crowd in too thick upon the guinea-man, he, the guinea-man, obeys such as he finds it agreeable and convenient to obey, and neglects the rest.

Note, that of the twenty-four who, for each cause, are always summoned, it is but twelve that, in any one cause, can ever serve: therefore every other time of his being summoned, each special juror, or, in other words, half the number summoned, might, if the inconvenience were real, stay at home without being missed: and, to a majority composed of these gentlemen, suppose even a few yeomen jurors added, *viz.* in the character of *talesmen*, who would ever care about it?

Of the terrific *fine*, which (by the act of which the act in question is an amendment) is, in case of non-attendance, hung over the heads of jurymen, were I to add that it does not extend to special jurymen, his reply would be of course — "Oh, but this is according to the construction you put upon the act: — mine was different." Be it so. But what reason could a sheriff have for supposing, that when he was sending an invitation to a gentleman, to partake of a good dinner, in good company, after sitting to act the part of a judge, and to receive moreover a guinea at the least, and perhaps a number of them, he was putting him to "*inconvenience?*" or if, in the instance of this or that particular gentleman it were an inconvenience, what is there that could prompt a sheriff to be too frequent in the reiterated production of such inconvenience?

Note that, in those days, a guinea was worth at least twice what it is worth at present.

Twenty years or thereabouts after the passing of this supposed inconvenience-producing act — (take for the act either the *original* act of the 3 Geo. II. or the *amending* act of 4 Geo. II.) — the topic of special juries came again upon the carpet: and what was the complaint then? — that, in the character of special jurymen, gentlemen were put to inconvenience by over-attendance? No: — that they were oppressed? — no: but that they were over-pampered: — that "great and extravagant fees were paid to them:" — and "*frequent*" are these complaints declared to have been by the act. (24 Geo. III. c. 18, § 2.)

‡ *Inconvenient.... it must be much more.... on account of rank.*] What we have just been seeing, is a specimen of the sort of regard paid by the fraternity of lawyers to the convenience of *gentlemen* jurors — the class of jurors, whose convenience is entitled to regard: — let us now observe the sort of regard paid by the same learned fraternity to the convenience of *common* jurors — low people, whose convenience is entitled to..... to what? to *any* regard? To this one knows not exactly what to say: — either to none at all; or, if to any, to next to none.

Instead of *convenience*, we might say *feelings*. Since the use made of it for crushing the liberty of the press, *feelings*, always the more *sentimental*, is become the more *legal* term.

To a man who, in the sale of his time, finds the sole source of his subsistence, less inconvenient to sacrifice a portion of his time for 8*d.* than to a man to whom not only subsistence but affluence is secured, and *that* without the sale of any part of his time, it is to sell, on this particular occasion, the same portion of his time, receiving for it, besides a very good dinner, at the least one guinea. This is the proposition, with the supposed truth of which the learned gentleman was not only possessed, but to such a degree captivated, that, under the guise of a *reason*, introduced in form by the word *for*, it led him astray into what we have seen to be an erroneous conception, or at any rate an erroneous declaration, of the meaning of an act of parliament.

Such is the proposition, which, in this its character of a *reason*, stands at the head of those "*observations*" which, in the sight of the pre-eminently learned judge, were so "*perfectly just*:" and which, in that of another learned barrister, who dates from *Lincoln's Inn*, will be soon seen to be so "*perfectly clear and correct.*"

The information thus afforded is no light matter: — inasmuch as here we see, expressed in *words*, the sort of regard, which the *convenience*, the *feelings*, the *interests*, — (any of these words may alike be employed) — the *interests* (say) of the vast majority of the people, may expect to experience at the hands of lawyers of all sorts and sizes, official as well as professional: the same sort of regard which stands expressed by *deeds*, in the sort of law, framed by these same learned hands — for the *use* shall we say? — no, anything but the *use* — of that same despised portion of the people.

In this sketch may be seen a picture — a family picture — of the fraternity of English lawyers: — a picture which cannot be charged with hostile distortion or discolourment, since it is drawn by their own hands.

From this view of it might be formed, *à priori*, a conception, of the treatment which, by sad experience, this portion of the people *feel* rather than *see* themselves to have met with at their

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"But with regard to the sheriff, I think there is a very material distinction between common and special juries. With respect to the former, the returning them upon the *venire facias* rests with the sheriff; and as he is required by the 5th section of the statute 3 Geo. II. c. 25 to enter or register in a book to be kept for that purpose, the names of such persons as shall be summoned, and serve as jurors on trials at *Nisi Prius*, with their additions and places of abode, and also the times of their services, so I think that if *he* were to return any persons to serve as common jurymen oftener than he ought, *he* would be liable to the penalties of the statute; but with respect to special juries, they are struck before the master of the King's Bench, and the remembrancer in the Exchequer, under the 13th section of the above act of parliament, which declares that the jury so struck shall be the jury returned for the trial of the issue; and accordingly their names are specially inserted in the *distringas*. If the sheriff, therefore, who has nothing further to do with the striking of special juries, than attending with the freeholders' book out of which their names are taken, were to object to the nomination of such as had before served within the limited time, and his objections were overruled, he would not, I think, be liable to any penalty for summoning them upon the *distringas*; and indeed, if he were to refuse to do so, he might incur a contempt of the *court*, who *would not suffer their process to be disputed** in the execution of it by the sheriff. If you should think it *worth your while*,† however, to *rectify*‡ the practice which has obtained, of calling so often upon special jurymen to attend at *Nisi Prius*, the proper mode, I conceive, would be, when you attend with the freeholders' book for the purpose of striking a special jury, to carry with you the book containing the names of such persons as have already served within the last two terms of

hands: what they have met with, and for ever may justly expect to meet with, so long as, in *Blackstone's* sense and words, "*every thing is as it should be.*"

Not that they are altogether devoid of sympathy: — for no human being was ever altogether devoid of sympathy. But, as is but too natural, their sympathy, such as it is, is confined to the classes with which they associate or wish to associate: and having, as we have seen, been so liberal of it to the distinguished few above — the men in high situations — they have none left for the undistinguished multitude beneath.

Hence it is that in England (not indeed in England only) the people have come to be divided into two classes: one, of those to whom justice is to be *sold;* the other, of those to whom justice is to be *denied:* — denied, for the benefit of those who alone can come up to the price: and who by that means are authorized and required to purchase the faculty of oppressing, under the name, and with the power, of justice.

This is the authoritative comment upon *Magna Charta:* — the comment, written, day after day, by the fee-fed hands of the *twelve judges;* not forgetting the one supremely learned person, who sits at the head of the law, in this as well as so many other senses.

That a poor man can better afford to work for nothing than a rich man (for this, though a short interpretation, is a sufficiently correct one,) is a proposition of that sort, which it seems impossible for any man to repeat, who, after notice given him that it will be looked into, should bestow on it a second glance. But how impossible soever it may be for a man seriously to *think* so, nothing can be more easy to a man than to *say* so: and when such is the state of his *feelings*, that, while those of the higher classes are something to him, those of the lower classes are as nothing, it is no less natural for him to say of the working class, that they can afford to be made to work for nothing, and that they don't mind being made to work for nothing, than it was for the *cook* to say of her *eels*, that *they don't mind being skinned.* Why did not the cook's eels mind being skinned? Because they were *used to it.* Why do not the Lord Chief Baron's common jurors mind being made to work for nothing? Because they are *used to it.* The cook for her wages is used to see eels skinned without minding it: and the Lord Chief Baron, for his fees, and those of his friends, is used to see the great majority of the people outlawed and stripped to the skin, without minding it. In both cases the *construction* is ambiguous; but in both cases the *import* is clear enough.

"Perfectly just" as this mode of doing justice to rich and poor is, it seems, at present, it has not been looked upon in that light by all judges at all times.

Wilkes against Eames, Mich. 11 Geo. II. anno 1737. Andrews's Rep. p. 51.—"Probyn Just: said, that he knew no reason why special jurors, attending a trial in the country, should have more allowed them than a *common* jury; the *other* being generally *more able* and better qualified to serve their country than these."

* *Court . . . . would not suffer their process to be disputed.*] No: *that* they would not; *viz.* if by any one it happened to be found "*worth while*" to bring the matter before them: — and at any rate, this was a very good advice.

† *Worth your while.*] This is the passage which hit so exactly the taste of the Lord Chief Baron, and which accordingly, in the character of an argument *ad hominem*, he made use of, in the representation made by his lordship, as we have seen, to the sheriff, in hopes of engaging him to give up so romantic a scheme. Would you give execution, would you pay obedience, to an act of parliament? — think first whether it be worth while: — if it be not worth while, who ever (*i. e.* which *of us* ever?) thinks of paying obedience to an act of parliament?

‡ *To rectify the practice.*] *Rectify* — as applied to *practice* — to the practice of *judges* — to *his own* practice — this was a word which has been seen to be — and indeed might without much expense of thought have been expected to prove — not altogether to the learned judge's taste: accordingly, as we have seen — and for what reason we have seen — he slips in the word *reform* instead of it. For, under this name, though not so easily under the name of *rectification*, the proposed and dreaded correction might without reserve be slighted and discountenanced.

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vacations, and *apprize the master or remembrancer** thereof, requiring him not to nominate them afresh; and if he does, you might try the effect of an application to the court to set aside the nomination, or have others nominated in lieu of those who had served before, on the ground that you might otherwise by possibility be subject to a penalty for summoning them. By this means *the opinion of the court would be obtained*,† and they would *probably* direct their officers to *alter the practice*‡ in future.

"It would not, I think, be prudent for you to hazard the incurring a contempt of the court by not summoning any of the jurors named in the *distringas*, on the ground of their having served before within the limited time; particularly as you would not, I conceive, for the reasons I have given, be liable to a penalty for summoning them; and though the jurors who had served before might be *excused* from serving again, on producing to you a *certificate*‖ of their former attendance, yet, I think, that the judge at *Nisi Prius* would not be inclined to fine the officer who had *not* ¶ nominated them. — I remain, dear Sir, your obedient servant, * * * * * * *"

Temple, March 10, 1808.

* *Apprize the master or remembrancer thereof.*] In pursuance of this advice, the sheriff did "apprize the master or remembrancer thereof:" and in chapter the 9th, we shall see what he got by it. In giving to the sheriff *this* part of the advice, this learned friend of his was *quizzing* him; unless so it were that the learned gentleman, how well soever *deserving* to be, *was not* completely in the secret.

† *The opinion of the court would be obtained.*] Yes: — and so would the expense of obtaining it: and moreover the disgrace and ridicule of presuming to endeavour to obtain it. To the sheriff, along with the expense, might have been obtained, perhaps, another epigram, still more pointed and *quizzatorial* than the Italian one. From any such "*urbane*" (for in the application of this attributive the sheriff cannot be accused of error) and polished bench — what would *not* indeed have been obtained is — any such attributive as that of the "*greatest fool*," or that of the "*weakest man*," that ever walked over earth without a keeper.

In the character of an advocate, to apply such attributives belongs *perhaps* only to Sir Vickery Gibbs: in the character of a judge, to take them up for the purpose of rendering them more bitter, under the guise of sweetening them — as Lord Ellenborough did to this same sheriff, on an occasion on which, according to his lordship's own declared opinion, what was said by this same person, in the character of witness, could have no influence on the fate or merits of the cause — belongs surely only to Lord Ellenborough.

In the same common design, different parts are acted, as nature, habit, and situation serve, by different characters: and amongst them, while no pretence for any more substantial vengeance can be found, such is the retribution that ought to be expected by all such adventurous knights as think to remove, though it be but a grain, of the mountain of abuse accumulated by the hands and for the use of *English* — add, or of *Scottish* lawyers.

‡ *They would probably . . . . alter the practice.*] *Alter* the practice indeed! — uncompelled by parliament, a *court* — an English law-court — or, uncompelled by the people, an English parliament — alter for the better its own practice! Yes: when without compulsion, the Mufti turns Christian; or the Pope, Protestant. The court alter its own practice! If for the better be meant, when was it ever known to do so? On the part of the learned author of this most learned advice, behold still the same pleasantry; or still the same simplicity and inscience.

‖ *Excused . . . . on producing a certificate.*] Sage advice, still in the same style. Excused, you may perhaps be from attending to receive a guinea or several guineas — excused, on condition of producing a certificate, the endeavour to produce which might or might not succeed, and in case of success would produce, without the guinea, more trouble than the attendance.

Here, as might be expected, we see another lawyer's remedy: — I don't mean *a remedy proposed by another lawyer*; — I mean another remedy, of the sort of those which lawyers are in use to make up and administer; — of that sort which they have in store for their clients, in the character, whether of *consultants*, or *suitors*. Bad indeed must the disease be, if the remedy they have to administer be not worse. And so happily as well as ingeniously have they managed, as not to have left, even at their own disposal, any good ones.

¶ This insertion of this word [*not*] seems to be a slip either of the pen or of the press. J. B.

CHAPTER VII.

ADVICE FROM LINCOLN'S-INN.

§ 1. *This Letter, why introduced here.*

THE *authority* of the learned gentleman, who dates from *Lincoln's-Inn*, stands upon a footing very different from that of his learned brother, who dates from the *Temple*: — a very different footing — and it must be confessed, a very inferior one. Both luminaries are indeed alike eclipsed by stars, such as * * * * *: and, by this common occultation, both are placed in the scale of authority thus far on the same level. But the Templar, whose "*observations*" are so "*perfectly just*," is by this adoption become the child of, or rather *quoad hoc* one person with, the pre-eminently learned judge: to the purpose of the present inquiry, he is in effect *Lord Chief Baron*: while his learned brother on the other side of Fleet-street, less fortunate in the *date* of the application made to him, missed thereby the having been admitted to so much as a chance of so honourable an advantage.

Why then introduce him, or his letter, here? says a natural question, and by no means an irrelevant one. The answer is — because it is upon the evidence of this gentleman that the *existence* of the *guinea-corps*, and the *notoriety* of such its appellation, rest.

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As to his *title to credence* — a remark that has been made already is — how improbable it is, that if a matter of fact, stated as notorious, were not really so, it should be mentioned as such by a professional man circumstanced as this gentleman appears to be. True it is, that from the mention made by him of this *guinea-corps*, a suspicion might arise, that feelings were harboured by him, heretical and rebellious as towards the powers that be: and that it was for the gratification of these wicked feelings that he had trumped up this story about the guinea-corps, that statement having in fact no truth in it.

But, for the clearing of *his* character, in which, so far as concerns *evidentiary trustworthiness*, the character of *this inquiry* is, in some measure, involved, I feel it incumbent on me to show, which I shall do in proper place, that in his feelings — I mean, in the feelings manifested in this his letter when taken in all its parts — there is nothing that does not harmonise with the purest jurisprudential orthodoxy: which being the case, it would be an injury done not only to this argument, but to the reputation and prospects of the gentleman himself, whoever he may be, if any suspicion were left unremoved, of his having anything in common, but the formal place of date, with any such reprobate as the author of *these* pages.

Not but that in this busy age, in which reform, as in the days of *Balak* and *Balaam*, *prophecy* is become contagious, *he too* (I mean the learned and practising gentleman,) as will be seen, is a reformer. But then his plan of reform is (as will also be seen,) in the style of the *Perceval* school, a *temperate* one: meaning by *temperate*, a remedy which shall either leave the disease as it found it, or by the blessing of the Almighty! (meaning the almighty of the *No-Popery* worship) make it worse.

After the necessary preface follows the learned letter in *hæc verba*, with a few occasional *elucidations* by another hand.

§ 2. *The Letter, with Annotations.*

TO SIR RICHARD PHILLIPS.

Lincoln's-Inn, Sept. 1, 1808.

"DEAR SIR, — Inclosed you will receive the act relating to the summoning of juries on trials at *Nisi Prius*, and *the three letters** with the perusal of which you have favoured me.

"In respect to the *act* itself, it appears to have been passed with the sole intention of relieving those who are liable to serve on juries, from the inconvenience which they were before subject to, from their constant liability to be summoned from term to term, without any consideration or respect paid to the labour of their previous attendances, and it is most clear that *it did not originate in any jealousy* † entertained that men so summoned and serving, would fail to act uprightly between the parties.‡

* *The three letters.*] These must evidently have been the three letters above reprinted, in so many preceding chapters: *viz.* 1. The letter dated from the Temple; 2. Sheriff Sir Richard Phillips to the Lord Chief Baron; 3. The Lord Chief Baron's answer to the said Sir Richard Phillips.

† *Most clear that it did not originate in any jealousy, &c.*] Here we see the first of the evidences above alluded to, by which the purity and simplicity of these learned eyes stand demonstrated. Not only are they (as we shall see presently) inaccessible to any suspicion-exciting ray capable of being emitted from any other source, but, when the tendency of an act of parliament might be to excite any sort of suspicion capable of pointing itself towards the higher powers, they are inaccessible to the very first words of the act.

The act, I mean the earliest, the most efficient, and by far the longest, of the four or five acts which bear upon the subject (3 Geo. II. c. 25,) states, in the very first line of it, as the very cause of its enactment, "the evil practice used in corrupting of jurors;" and it is with these words before him (or why were they not before him?) that to this learned person "it is most clear that it did not originate in any jealousy entertained that men so summoned and serving, would fail to act uprightly between the parties." No: the intention, "*the sole intention of it*," is stated by him as being that of mitigating the sort of vexation which, the instant a perception arose that the breast of a *gentleman* stood exposed to it, made that deep impression, which we have already witnessed, on the feelings of the learned judge.

What is possible indeed is — that the act which at that moment lay before that gentleman was — not the very act above mentioned, but another of the next year; *viz.* that of 4 Geo. II. c. 7. But this last-mentioned statute, being but a patch put upon that other of the year preceding, is so indented into it, that to any one who had not taken the trouble to turn to the amended act, any self-satisfactory conception as the amending act would be plainly impossible.

By the act of the 7th Geo. II. c. 7, § 2, after reciting, that by the act 3 Geo. II. c. 25, it had been enacted, that "no persons shall be returned as jurors to serve on trials at *Nisi Prius*" "who have served within .... two years before .... in any .... county" except as excepted; and that "by reason of the frequent sessions of *Nisi Prius* in the .... King's Bench, Common Pleas, and Exchequer at Westminster, the said provision cannot be put in execution in the county of Middlesex, but is found impracticable,"— it is (after this recital) enacted, "that the said recited clause .... shall not .... extend to the county of Middlesex." Then, as to *that* county, it goes on and enacts, that "no person shall be returned to serve as a juror at any session of Nisi Prius in the county of Middlesex, who has been returned to serve as a juror at any such session of Nisi Prius in the said county, in the two *terms* or *vacations* next immediately preceding" —— "under such penalty upon the sheriff, under-sheriff, bailiff, or other officer, employed or concerned in the summoning or returning of juries in .... Middlesex, as might have been inflicted on .... any of them for any offence against the said recited clauses."

‡ "*Between the parties.*"]—*Note of Sir Richard*

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"Mr * * * *, than whom no man can be better informed on the subject, is perfectly clear and correct in his observations,* and in his statement of the manner in which special juries are struck."

"*One circumstance* ought to be attended to, which *must remove all suspicion*† on this subject: it is this, that special juries are struck *under an order of the court only*,‡ and the practice is for the opposite solicitors to strike out a name alternately until the list is reduced to the proper number, so that it must be the fault of the defendant's own solicitor, if he does not obtain a respectable list‖ for the trial of the issue."

Phillips to these words:—"It should be observed, that the persons who serve on special juries rather desire the employment than to be relieved from it, as they receive a guinea for every cause; and it is not about causes between individuals on which there can be any ground of jealousy. So far are special jurymen from seeking to be relieved, that, owing to the advantages derived from serving on them, I have received, since I have been sheriff, more than a hundred applications from *respectable* persons, who, under a mistaken notion that it was in my power, have wished me to place them on what they called *the special jury list*.

"R. P."

* *Mr. * * * * is perfectly clear and correct in his observations.*] Mr. * * * *, *viz.* the learned gentleman who dates from the Temple; and of whose learning we have already made our profit: *viz.* in the last preceding chapter.

On that occasion, at the head of those observations of his which were so "*perfectly just*," we saw the *lawyer's balance*, for weighing the value of *gentlemen's* time against the value of *low people's* time: and, with the correctness of these scales, as well as with the several other observations from the same learned quarter, the learned inhabitant of Lincoln's-Inn, is (we here see) no less "*perfectly*" satisfied than we have seen the pre-eminently learned judge.

Like causes produce like effects: he who sees one of these learned persons, sees another: he who sees *Bavius* sees *Mævius*. An observation to this effect has been made already: but the occasions for repeating it succeed one another without end.

† *One circumstance . . . . must remove all suspicion.*] Remove it?—from what place? Not surely from any one of these learned bosoms, the door of which, as against all suspicions pointing *upwards*, remains of course for ever closed;—not from any such seat of imperturbable tranquillity, forasmuch as what is never *is* a place can never be removed out of it—but from bosoms actually labouring under the *green-eyed malady*, such as the bosom of this troublesome and meddling sheriff. But let us see what this remedy is, which, being swallowed, ought to operate as a specific against suspicion: *viz.* in a constitution actually labouring under, or at least predisposed to, the species of *green-sickness* above mentioned.

‡ *Special juries are struck under an order of court only.*]—Add, *the court never knowing any thing about the matter.* The order (as we have seen) a mere scrap of spoilt and wasted paper:—a mere pretence for fee-catching:—a *pretence*, and that a *false* one. (*See* Part I. Chap. VI.) Of *gold*, not of *post*, is the *powder*, by which the malady of *suspicion* is so *regularly removed out of*, or rather *expelled from*, learned bosoms and learned eyes.

Alas! how different the ideas presented by the same object to unlearned ones. By the very document by which all suspicion had ever stood *excluded* from the *learned* bosom—by this very document it is that suspicion was not only *planted*, but *rooted*, in the *unlearned* one. By this so oppositely working document, what I do not mean is—the visibly existing, though in respect of its purport *falsely* pretended, not to say *forged*, order of court—what I do not mean is that too visible piece of mendacious and polluted paper:—what I do mean is the *invisible* order of the court—the neither *visible*, nor *audible*, nor yet the less perpetually *standing*, and *intelligible*, and *efficient*, and *general* order, continually issued by all the courts, to the *master packers* of their six or seven respective offices, requiring them to choose always *proper* persons, and never any other: *viz.* the *secret members* of the no longer *secret list*, which, as we have seen, stand indebted to the *Lord Chief Baron* probably for *existence*, avowedly for *protection* and *defence*.

Look to the Temple—look to Lincoln's-Inn—look where you will—look to what part of the constitution you will,—everything is consistent you will find—everything is orthodox—among learned gentlemen.

The use of a *jury* is—to serve as a check to *power*—to power that would otherwise be arbitrary—in the hands of a *judge*. The use—or at least *one* use—of the House of Commons, is—to serve as a check to power—to power that would otherwise be arbitrary—in the hands of the *crown*. In the case of the sort of jury termed a special jury, symptoms of a sort of *fever*et were, by this learned gentleman, observed—observed but not confessed, to have been produced by suspicions, imputing to this kind of jury an habitual leaning towards the crown side in crown causes. For the removal of this complaint, a febrifuge of sovereign virtue and efficacy, having been discovered by him in the above-mentioned remedy, *viz. an order of court*, let us apply it—I mean in *idea*—(for the application of it in substance belongs to, and is with perfect regularity and efficacy performed by other hands) to the case of the *House of Commons*. "One circumstance (let us say) ought to be attended to, which must remove all suspicion on this subject: it is this; *viz.* that members '*are struck*,' (chosen) *under an order of court*," (*viz.* the court at St. James's) "*only*."

Now is not *this*—deny it who can—a most composing opiate?—a very specific against all political "*ferments*?" I mean, against all such as are liable to break out *within doors*;—and, if it be good in *either* of the two cases, can it be otherwise than good in the other? And, as to this our learned practitioner, notwithstanding what we have seen escaping from him about the *guinea-corps*, can any doubt be at present entertained to the prejudice of his orthodoxy? and, if he is not *already* an *attorney-general*, or a *solicitor-general*, or a *master of the rolls*, or at least a *Welsh judge*, is it not high time he *should* be?

‖ *Fault of defendant's solicitor, if he does not obtain a respectable list.*] Alas! what a smoke is here! But can so much as a puff be necessary to dispel it? Respectable? Yes: in one sense, as

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"If any serious inconvenience were to arise from the present practice of striking and summoning special juries in Middlesex, I apprehend that it is the proper *province of the courts* above *to* interfere and *introduce a reform*, without the interference of the sheriff, who has, as Mr. * * * * states (and in this he is supported by the statute,) nothing further to do with striking of special juries than to attend with the freeholders' book, to enable the parties before the proper officer to fix upon such as are to be returned for the trial of the cause, and named in the *distringas*.

"As under these circumstances the sheriff cannot, by any possibility, in my opinion, be subject to any penalty for summoning the jurors named in the *distringas*, although they may have before served within the time limited in the general act, I do not think that the objection which you have taken is deserving of your further attention; but if you think it otherwise, the proper mode of obtaining the opinion of the courts on the subject is that which is pointed out by Mr. * * * *

"There is *one reform*,* however, which I conceive to be wholly within the power of the sheriff,† and that is, to correct the free-

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least, of any want of respectability there cannot be any fear; *viz.* of that sort of respectability which has *office* and *guineas* for its makers. Of that sort of respectability there is not among the candidates any absolute want, even before admission into the office: and this qualification, the guineas, if they did not *find*, would *make*. Here then is the respectability which not only does not stand in need of any exertion on the part of the defendant's solicitor to obtain it, but which, spite of his utmost exertions to the contrary, will be sure to be obtained, and constantly obtained.

Impartiality—security against all influence—all corrupt influence—descending from above?—Is *this* the true English translation for the "*respectability*" of this so learned, and *yet*, or *thence*, so charitably thinking and confiding gentleman? *Eight-and-forty* persons, all named by, or under the influence of, the powers above, and the faculty of discarding no more than *twelve* of them a security by which, according to this learned gentleman's necessitarian theory, "*all suspicion*," *viz.* of any want of "*respectability*,"—of "*respectability*" (in *this* sense must we say?) "*must be removed?*"

Patients, 48:—and all 48 expected to be cured by a remedy which applies to no more than 12? Were the learned gentleman a physician, would this be his style of practice?

* *There is one reform, &c.*] *Reform?* and from a bosom from which all suspicion that points *upwards*—all suspicion of the possibility of any need of reform—has been sentenced to be transported for life?

Gentle reader, patience. The reform is of the *temperate* kind—compose yourself. "*Wholly in the sheriff's power*," says the learned inventor and adviser of this reform. *Wholly out of my power*, (in the note we shall see to this same letter) says the *sheriff*: and so accordingly (as we have seen, and shall farther see) says the *act*.

With all his dispositions to find "*perfectly correct*" whatever came from above, or came recommended from above, it may be suspected of this learned gentleman, that he was—not completely in the secret. To the *permanence*, so decidedly approved and effectually protected by the learned judge, he sees not indeed the shadow of an objection: yet the sort of persons who, *beyond all others*, could be depended upon, not to say who *alone* could be depended upon, viz. for constancy of attendance, and for that obsequiousness without which constancy of attendance would have been of no use, these are the sort of persons whom so *hardheartedly*, as well as *inconsistently*, we see him thus devising plans for getting rid of: though, to be sure, if, while he was thus giving the advice, he knew it to be an advice that could not be pursued, as he must have done had he looked at the acts on which he grounded it, "*the case is altered*," and both these imputations vanish.

As to the question just mentioned, between the sheriff and this his learned adviser, it stands thus:

The statute 3 Geo. II. c. 25, is the only one that has any bearing upon the subject: and, upon the ground of this statute, the matter stands thus:—

1. By § 17, "where any special jury shall be ordered by rule of any of the said courts to be struck *by* (here it *is* "*by*" not "before") the proper officer of such court.... the sheriff.... shall be ordered by such rule to bring .... before such officer, the books or lists of persons qualified to serve on juries.... out of which juries *ought* to be returned by such sheriff.... *in like manner as the freeholders' book hath been usually ordered* to be brought, in order to the striking of juries for trials at the bar.... and in every such case the jury shall be taken and struck out of such books or lists respectively."

And in what manner, on the occasion thus alluded to, had the *freeholders' book* been usually ordered to be brought for the purpose so alluded to? This is among the points, in relation to which the lawyers concerned in the putting together this piece of patchwork took care, according to the custom among lawyers, to leave us in the dark. For, as often as, by the cry of any part of the injured people, they have been forced to make a show of affording relief against this or that part of the system of judicial abuse, organized by, and for the benefit of, the judges, one of their maxims is—to leave the *common*, alias *unwritten* law of their own making, to form the *groundwork*, applying to it no more than here and there a patch of *statute* law: that thus the *uncertainty*, which forms the essential character of the *groundwork*, may spread itself over the *patch*.

2. In § 1 and 2 of this same act, directions had been given for the making up of "*books*" containing *lists* of persons qualified to be returned to serve on juries: and this without any distinction mentioned as between common and special juries. In that section (§ 17) by a reference made from it to these two former ones (§ 1 and 2,) nothing (it would seem) would have been more easy than to say—that the books, made up according to the direction given in these two sections (§ 1 and 2,) are the books here meant by "*the books*," which here, for the purpose of nominating persons to serve on *special* juries, "*ought to be returned by such sheriff*."

But, by an understanding among the lawyers within and without both houses, and the clerks

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† See note †, page 151.

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holders' list, by expunging the names of all such persons who, from low situations in life, have crept into a little independence, and, by artifice and collusion with the inferior officers,

within the same, and the *speakers* to whom belongs the nomination of the said clerks, matters have all along been settled in such sort, that, be the statute ever so long, it shall be impossible, otherwise than by words of *vague description*, to make any *reference from* any part of any statute *to* any part of the *same* or *any other* statute.

In the printed editions (it is true) we see each statute divided into *sections*, and each section *numbered*. But *this is* the work of the *printer* only, or *his editor:* and a man who, in the penning of any fresh statute, should, for the purpose of making a reference to any preceding statute, or part of the same statute, be unguarded enough to make use of any part of the *numeration table* in the description of such preceding statute, or part of a statute, would find himself overwhelmed, with expressions of rage and terror, excited by so fee-checking an innovation — rage and terror, covered by a mask of contempt, as if excited by the contemplation of his *ignorance*.

For, on the one hand, clerks being paid for *copying*, according to the multitude of statutes and the length of each, and the confusion thus organized in each producing a perpetually-increasing demand for more — lawyers, on the other hand, being, *some* of them, paid in like proportion for the *drawing* of statutes, and *all* of them having everything to gain by the *confusion* that pervades the substance of the *several* statutes, and the *universal* and perpetually-increasing *uncertainty* in which that confusion beholds its fruit — hence this rule, by which it is provided, that an *act of parliament*, let it of itself constitute ever so considerable a volume, shall, like the mathematician's *point*, be a thing *without parts*, is a rule as sacred among these several learned and official persons, as any article in the 39 ever was to the most orthodox of the right reverend prelates that grace and sanctify the Upper House: and whoso should propose to abrogate it, would thereby become a worse than a popish or other *ipso facto* excommunicated convict — a malefactor *ipso facto* convicted of jacobinism.

In regard to this *article*, symptoms of heresy have now and then, it is true, been manifested in the Commons, in so high a quarter as the chair of the present Speaker: (See Speech of the Right Hon. Charles Abbott on *Mr. Curwen's Purity of Parliament Bill*, in Cobbett's Register for June 10, 1809; to which former manifestations of the like complexion might upon search be added:) but in this heresy there is so little of contagion, that the British *Themis* seems little more in danger of being healed of her habitual vertigo by this one hand, than the Church of Rome was of being purged of her errors by the *Pope*, who, about the middle of the last century had acquired, somehow or other, the surname of the *Protestant Pope*.

"The *books or lists* of persons qualified to serve on juries . . . . out of which," according to § 17, "juries *ought* to be returned by such sheriff," are they then the same *books or lists*, the manner of making up which is prescribed by the two first sections of this same act? Vague and incompetent as is the mode of description, it seems difficult to conceive how, if called upon to give, by his interpretation, an answer to this question, a judge could avoid answering it in the affirmative.

If so, what the sheriff, in his above-mentioned, and herein-after printed, note (p. 151,) on this part of the advice of his learned advisers, observes, in relation to this matter, is correct; *viz.* that it is not "in the power of the sheriff" — of any sheriff — to do that which by this his learned adviser this sheriff is advised to do, *viz.* "to correct the *freeholders' list* by *expunging* . . . . names." For, if *the books*, a description of which is given in the above-mentioned two first sections — and of which it appears that they are the only sort of books to which the appellation of "*freeholders' book*," employed in this 17th section, can apply — are really the books that, under this same 17th section, ought "to be brought before the said officer" — (to wit, the *master packer* of such *office* in such *court*) — to serve for the striking of special juries, these are books, of which, in § 2, it is provided, that they shall respectively be made by the "sheriff," who "shall . . . . take care that the names of the persons contained in such *duplicates* shall be *faithfully* entered alphabetically . . . . in some book . . . . to be kept by him . . . . for that purpose." "In such *duplicates*," says the act: of which sort of instrument here called a *duplicate*, it is to the present purpose sufficient to observe, that it is an instrument of *somebody else's* making, and not of *his*, *viz.* the sheriff's: and whether, had Mr. Sheriff Phillips, in pursuance of the advice herein given to him by this his learned adviser, "*expunged*" *any* of the names contained in such duplicates, the "names . . . . contained in such duplicates" would have been "*entered faithfully*," may be left to any man to pronounce.

A course, indeed, which might be taken without much difficulty — I mean, *physical* difficulty — is, after *entering* the names "*faithfully*," to pursue the advice given by this learned adviser, and accordingly, either once for all, or *toties quoties*, to "*expunge*" names. But whether, after any such purification, or number of purifications performed, the book presented to the officer of the court — *viz.* the master packer — as and for the *freeholders' book*, could with propriety be said to be *the freeholders' book*, is another *curious* question, which howsoever curious, and to those who would be paid for playing their parts in the trial of it, an agreeable one, I would not be the man to advise any other man to cause to be tried at *his* expense. It is one of those questions, in respect of which it is difficult to conceive how, in case of its being tried, for example, on an *indictment*, a chief judge, in his endeavours to persuade either a jury, even though *unpacked*, or his fellow-judges, to decide — either for the king or for the defendant, whichsoever happened for the moment to find most favour in his sight — could experience any difficulty: and as for this our reforming sheriff, supposing him, in pursuance of this learned advice, to have become such defendant, what sort of favour he could reasonably expect at the hands of the learned judge who, in that case, would have the trying of him, may be left for him to imagine from the *excursion* which, in the case of *Carr against Hood*, was made not long after by that same learned judge: *viz.* if not for the *purpose*, to the *effect* of giving him a sample of it in the character of a *witness:* always remembering that, of such purification, if performed with any degree of consistency and steadiness, the *effect* would be, as in his instance

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get their names placed upon the freeholders' lists with the proper additions, with a view principally to their adding to that independence‡ by the fees payable for their serving on special juries: *I know several* of this description, who are ludicrously described as being deeply concerned and interested in the *guinea-trade*,‖ and a diligent scrutiny, with

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it had been the declared *object*, to make things *better than well*; and in so doing, to destroy not only the *works*, but the very *principle*, of that elegant art—that branch of the art of *design*—which exercises itself in the *grouping* of jurors:—an art, the planting and cultivation of which has already been affording so much occupation to the *wisdom of ages*.

The case is—that the statute in question, having, like most other statutes, been penned as above, for the express purpose of being misconceived, has, in pursuance of that purpose, been put into such a form and method, that both the learned adviser, and his official client and corrector, found it more easy and pleasant to speak from *imagination* than from the *act*.

It was the imagination of the learned adviser that presented him with the idea of its "being *wholly* within the power of the sheriff" "to correct the list" in question, by "expunging names" out of it. It was the imagination of the sheriff that presented *him* with the idea, that "to make any alteration in the returns" is not merely "forbidden," but "forbidden under a '*penalty*,' and that a heavy one."

As to the *omission*—and let us add, *the expunction*—of names, of the description in question; *forbidden* it may indeed be said to be, though in the rather indirect way we have just been seeing, *viz.* by requiring that the names of the persons contained in such duplicates be *faithfully* entered: but, to the offence of which this indirect description is given, *no* penalty is attached.

In the next section, it is true, *viz.* § 3, comes a clause, by which a penalty *is* appointed. But the offence to which this penalty is attached is—not that which consists in the *leaving out* of a list of the sort in question a name which ought to be *in* it, but the *putting into* it, or at least *acting* as if there *had been* put into it, a name which ought *not* to have been in it.

Then, as to the "*heaviness*" of the penalty, if the real and effective weight be here in question, *viz.* the weight of it as estimated by the quantity of money which the levying of it takes out of a man's pocket—if this be what our sheriff had in view, very inadequate was (speaking with respect) the conception entertained by him, for the moment at least, of the real and effective weight of statute penalties. Of the penalty here in question, the *minimum* is no more than forty shillings, and the *maximum* but £10. But even this £10, if £10 it be, is not to be levied but "upon examination in a *summary* way" (§ 3,) in the manner herein intimated: in which case, at the expense of £10 at the utmost, he would have it in his power to exonerate himself of any further demand on this score: whereas had the penalty been no more than 1s., to which in this case, he would hardly have given the denomination of a "*heavy*" one—this single shilling being to have been recovered in a *regular* way, I for my part would not be the man to save him harmless for ten times the *maximum* of £10—no, nor for a good deal more.

What will be *amusing* enough—and (to any man in whose bosom the interests of mankind are wont to excite any warmer sympathy than the interest of Judge and Co.) *consolatory*, is—to observe the two traps set for the unlearned man, one by each of these his two learned advisers, and his unlearned good sense saving him from both.

To make "application to the court," *viz.* in the only proper manner (learned gentlemen fee'd and so forth) but *without any ground for it*, is the learned advice given from the *Temple*.

To get himself *indicted* or *informed against* before Lord Ellenborough—(mark well, before *Lord Ellenborough*)—indicted for *an attempt to commit a reform*, *viz.* by *cutting* up the most valuable branch of the packing trade—indicted, and this with at least a plausible ground, say rather a *good* ground to build a conviction upon.

After all this learned advice, including the pre-eminently learned hint not to risk his reputation for "*discretion*," by any such attempt as that of "making *us better than well*," the unlearned person took a course which assuredly would not have been advised by any of the three, and laid bare the whole matter to the public eye.

And here we see matter not only of satisfaction, in respect of the escape made by the *bird* from the *snares* set for him by both *fowlers*, but of gratitude for the instructive song in which he has sung of it.

†"*Power of the sheriff.*"] *Note of Sir Richard Phillips to these words:*—"This is not in the power of the sheriff, who is forbidden to make any alteration in the returns, under a heavy penalty. "R. P."

‡ *With a view . . . . to . . . . their adding to that independence.*] Receipt for adding to independence:—Solicit and solicit, till you have succeeded in getting into a situation of profit, out of which, without a moment's warning, for anything or for nothing, you may be let drop at any time, without possibility of complaint, and without knowing why or wherefore.

What minister, or other man in power, is there, who, on the part of all sorts of men, whose functions are said and supposed to act as checks to his own, would not be content to see "*independence*" not only thus "*added to*," but, if after such an addition there could be anything more to add to it, thus rendered complete? A system of this sort would be not less efficient (and how much more decent would it not be?) than the giving licence, by act of parliament, to all contracts whereby a member sells himself to a minister—licence and protection, on condition that the terms employed in them shall not be "*express*."—(See the Perceval Parliamentary Purity Act, 49 Geo. III. c. 118, § 3.)

‖ *Deeply concerned and interested in the guinea-trade.*] *Imprudence—treachery—telling tales out of school*—such are the reflections, which by a man, of more warmth and learning than candour or reflection, might be apt to be cast upon the disclosure thus made by our learned adviser. Against a load of imputation, which, though to a first glance not altogether without colour, will on an impartial examination be seen to be not more serious than groundless, it would be ungenerous at least, if not unjust, to leave him altogether without defence. If of the *appellation* (guinea-man) and of the habits and dispositions which it imports, the existence were really noto-

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the assistance of the returning officers, might lead to *this reform*.

"I do not, under this last observation, mean to insinuate that even such characters *acting upon oath* are likely to *do wrong*,* or that they do not possess sufficient powers of discrimination to *decide rightly*; but I think that the special jury fees *should be received only in the way of compensation* for actual expenses and loss of time, and not as matters of profit.†

rious—notorious in any such degree as that in which he understood them so to be—on this supposition, to have kept them from the knowledge of a sheriff, and especially so active and inquisitive a sheriff, and one to whom, in less than a twelvemonth, the number of applications made for situations in this very corps amounted to above a hundred (Phillips, p. 178,) would have been altogether hopeless: while, by the frankness of the communication, all suspicion of wishing to throw a veil over the practice was, in the most promising at least, if not altogether effectual manner, obviated.

Between *judges*, *master packers*, *and guinea-men*, all suspicion of anything like an *understanding* was, in this refined and *indirect* way, much more effectually repelled, than it could have been by any *direct* arguments: since, of any such arguments, the effect would have been, in the first place, to bring forward an idea, which could not be too carefully kept out of sight; *viz.* the idea of a state of things, the existence of which would, if once made matter of argument, be much more likely to be confirmed by it than disproved.

Against *reform* in every line, it begins to be discovered, that much more effectual war may sometimes be carried on by *adoption*, than by open opposition. In a very high place, indeed, go almost when you will, you may hear the abuses of the law not only acknowledged, but inveighed against:—just as if anything but *will* were wanting to the removal of them;—just as if in the whole world of law there were any one thing of which the learned orator had any tolerably clear conception, except the value of those same abuses;—just as if the most mischievous of those abuses were not the food on which himself, and his closest connexions have grown so fat upon;—just as if they were not dearer to him than the apple of his eye.

* *Likely to do wrong*] The faith of this learned person in the virtue of an oath is truly edifying. Unsanctified by this principle of sanctification, the probity of these guinea-traders does unquestionably not appear to have been set by him at a very high rate: give them an oath to swallow, every impure property is, by this consecrated vehicle, carried off. Note, that the oath by which the swallower is rendered thus unlikely "*to do wrong*," is the very oath which, as often as any difference of opinion has place among the *elect twelve*, is regularly productive of *perjury*—of perjury on the part of some portion of the number from *one* to *eleven* inclusive: I say of perjury; unless it be supposed, that, by that terror of inevitable and insupportable torture by which the will is subdued, the understanding is enlightened and converted; and that of him whose power of endurance is the weakest, the conviction and conversion is regularly and proportionably the most sincere. An oath "preservative against corruption!"—an oath composed of vague and unbinding generalities, such as those of which such effectual care has regularly been taken that it *shall* be composed!

Alas! by what fatality did so simple an expedient escape the piously scrupulous and learned mind, that has the royal conscience in its keeping—so cheap a defence of nations against corruption—as the advising his Majesty to give to the department of the commander in chief the benefit of a pledge of purity, correspondent to that by which, in the *judicial* department, the difficulty of "*doing wrong*" has been rendered thus extreme! "The person whom you shall nominate to an office within your department shall, in every instance, be, in every respect, the person the best qualified for the filling of that office.—So help you God!" With such a security, the child in leading-strings might have been trusted with a commission as safely as his father, and the wiles of Mrs. Clarke would have had no more power over the virtue of the commander in chief, than those of *Dalilah* had over Samson before his hair was crept.

† *Not as matters of profit.*] The severity of the learned gentleman's virtue has, upon this occasion, displayed itself in an opinion, which it is somewhat easier to admire than to understand. That a declaration, to the effect in question, should be incorporated into the purity-securing oath?—is *that* what he means to recommend? "I A. B. (for example) "do declare, that the guinea just received by me has been and is 'received only in the way of compensation for actual expenses and loss of time, and not as a matter of profit. So help me God!" Or if duly construed and put into a *tangible* shape, would the proposed security be found to amount, for example, to something to this effect? *viz.* that on a *motion*, *regularly* made by some learned gentleman, opposable or unopposable by learned gentlemen on the other side, a rule should, if the court think fit, be with equal *regularity* made, ordering that "an account be taken by the master *of the actual expenses* incurred by each special juryman, *viz.* in the shape of *chaise hire*, and *subsistence* upon the road, as also of the *compensation due to him for loss of time*; with a direction to allow out of the guinea (being the greatest sum allowed by the act) no greater sum than shall be sufficient to cover such *actual expenses*, together with such *due compensation* as aforesaid:—costs of the application to await the master's report."

The latter I give as being more particularly in unison with the *general* spirit and tendency of such *amendments* of the law as are to be found in the statute book, made at the suggestion, or in conformity to the advice, of the gentlemen of the long robe. But as to *this* opinion *in particular*, whether it be in legal *religion*, as in the first case, or in legal *practice*, as in the last case, that the truest interpretation is to be sought for it, must be left for the reader to determine.

CHAPTER VIII.

MAXIMS CONCERNING REFORM, DEDUCED FROM THE ABOVE LETTER.

§ 1. *The Maxims themselves.*

THE subject of *reform* being at present on the carpet, and a variety of opinions afloat, a few *maxims* or *aphorisms*, half a dozen or thereabouts, and containing the substance of

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so much of the above learned dissertation as regards that subject, may, perhaps, in these unsteady times, be found not altogether out of season.

Lest the eye of the reader's mind should find itself incommoded by too strong a blaze of light bursting in upon it at once, to prepare it for the brilliancy of the more grand and comprehensive principles, I place in front a rule or two, confined in their extent to the only subject that belongs directly and necessarily to these pages—*viz.* the institution of *special* juries:—

1. When, for the execution of a plan repugnant to the acknowledged principles of the constitution, and to the equally acknowledged injunctions of an act of parliament, 48 persons have been selected, of whom, for the insuring the success of that plan, 12, or upon occasion a single one, are in every individual instance sufficient, the faculty of discarding 12 out of the 48 will, if lodged in proper hands, be, in every such instance, sufficient to defeat it.

For (says the Lincoln's-Inn letter) "one circumstance .... must remove all suspicion on this subject: .... Special juries are struck under an order of the court only .... so that it must be the fault of the defendant's own solicitor, if he does not obtain a respectable list for the trial of the issue."

2. If, in the instance of a set of men of whom (except their being in possession, each of them, of a portion of property which may be insufficient for the maintenance of any one of them) nothing more is known than that they are, all of them, pensioners during pleasure under the authority on which *theirs* was intended and *is said* to serve as a check—if, in the instance of a set of petty placemen so circumstanced, there be any cause of apprehension, lest, on any occasion, they should manifest, as towards that authority, a degree of obsequiousness inconsistent with probity and independence—in such imaginary case, a sort of *sanction* which, as often as any real difference of opinion has had and continues to have place among them, is trodden under foot, would, as against such danger, or cause of apprehension, afford a sufficient security.

For "I do not" (says our learned adviser) "mean to insinuate, that even such characters, *acting upon oath*, are likely to do wrong:" "*such characters*," *viz.* persons who, by this same learned gentleman, have just been described as "persons who from low situations in life have crept into a little independence, and by *artifice* and *collusion* with the inferior officers, get their names placed upon the freeholders' list, with a view principally to their adding to that independence by the fees payable for their serving on special juries."

3. If, in the whole expanse of the all-perfect system, it were possible that a particle of imperfection should anywhere be found, the imputation, in so far as it were just, would fall—*no* part of it on the *most* powerful, *every* part of it on the *least* powerful, of all the classes that could be found concerned in it: no part of it upon those under whose eye, and by whose authority, everything is done that *is* done, every part of it on those whose *dependence* on that authority is complete and absolute.

Accordingly, in the instance of the only *reform*, which is represented as lying within the *power*, of the only person in whose instance any *inclination* to that effect has been perceptible, the "*reform*" suggested consists in the "*expunging the names of all such persons who from low situations in life have crept into a little independence.*" Thus far the suggestion of the learned reformer: for the due understanding of which, it is necessary to be considered, that the consequence would be (nothing less being sufficient to insure its continuance,) that if in numbers sufficient for the purpose, persons sufficiently adapted to the purpose were not found remaining, other persons of the necessary complexion, and in sufficient number, would of course be taken in to fill up the gap.

4. Every man—so he be *high* enough—is a *proper*—and except others seated on the same level, and linked with him in the bands of the same interest, *the only proper*—judge in his own cause.

Accordingly, as we have seen, "it is the proper province of *the court above*," (says our learned reformer who dates from Lincoln's-Inn) "to interfere and *introduce* a "*reform*."

5. The hands by whose *industry* abuse has been *created*—by whose *steadiness* it has been *preserved*—and by which, whether created or only preserved by them, the *profit* has been, and continues to be, *reaped*—these are the hands at which the *extirpation* of it is to be sought.

6. When, for example, as long as he has been sitting on his bench, a judge has been in the habit of treading under foot, with open eyes, the authority of parliament, the judge himself is the proper authority to apply to, if you would have him cease doing so; parliament, not.

For the letter, in which the Lord Chief Baron's determination to persevere in that same habit had been deliberately declared, makes one of "*the three letters with the perusal of which*" (says this learned gentleman to the sheriff) "*you have favoured me.*"

§ 2. *Corroborations from Lord Eldon's Scotch Reform.*

Such are the *articles*, which, in substance and effect, though not in words (for words are ever under the command of *existing cir-*

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cumstances) constitute, so far as the most probable *interpretation*, or, as lawyers say, *construction*, which I have been able to find for the learned words in question may be found to be correct, part and parcel of *this our* lawyer's creed.

I might have said *the* lawyer's creed: for, as already intimated, with here and there a possible exception, too rare at any rate to be to such a purpose worth noticing, being all bred in the same learned school, all cast in the said learned mould, whoever sees one learned gentleman sees *all:* nor are these articles of the number of those, which, to obtain acceptance and adherence, require signature.

Thus much must be confessed — *viz.* that as yet it is only in so far as the individual learned mind in question can, with propriety, be deemed and taken as and for a fair sample of the genus, that the propositions in question can in their herein alleged character of articles of the lawyer's creed, be with propriety received as genuine.

In that same character, as far as concerns reform of law abuses, can the genuineness of these articles find any man still sceptically enough disposed to doubt of it? Let him turn to the list of *Commissioners for the Reform of Scottish Judicature.* (See Report of their proceedings as printed for the use of the House of Commons, in pursuance of an order dated June 9, 1809.) Let him see with what religious care the name of every person is shut out, on whose part any the least desire to see defalcated any the least particle of abuse from a system composed wholly of abuse, had ever been perceptible; while those of the maintainers and defenders of the whole system are with correspondent carefulness collected and inserted.

Taking, for the basis of his calculation, the number of *two-and-thirty reapers*, let him admire and calculate how rich a *harvest of reward* is destined to be reaped by learned industry, occupied in the field of reform, in the accustomed course of learned husbandry.

From what they have done already, let him calculate what they are about to do. Let him pray — if haply into his religion be admitted any particle of regard for the welfare of the people, and the ends of justice — let him pray, that the ministers of such justice may, in the sense most beneficial to the country, be *prevented in all their doings;* that what has been begun in *doubts* may be continued and ended in the same; and that of these doubts, the distribution of the matter of reward throughout the mass of learned merit, may, as being to the country the least bitter, be the only fruit.

Let him behold in idea, and, if so it please him, in black and white, a judicatory,* in which a business occupies as many years as, in another sitting by the side of it,† the same business would occupy hours, or perhaps minutes, and these learned persons not hesitating to attach their signatures to an opinion that "the present forms are now, or by the authority of the court may easily be rendered, fully adequate for the purposes of justice and *dispatch* of business, without parliamentary *interference*," (p. 4.)

Let him behold the signature of the author of *Marmion* annexed — not to a receipt for the profits of Marmion, but — to the produce of the learned labours of this constellation of learned commissioners, so worthy to have chosen the *præses* whom they chose — so worthy to be chosen, as in fact they had been chosen, by that *præses.*

Let him give thanks, that, to his other offices, the author of *Marmion* does not add that of calling up the *late* Earl, in the forenoon or the afternoon, and telling him what to do, as soon as official advice has been received that the enemy is within his lines.‡

After reading, as above, the history of the appointment and proceedings of the commissioners, let him, among the speeches of the Edinburgh advocates,‖ under the name of the author of *Marmion*, read a rhapsody of irrelevant buffoonery, in which he will not find a serious word, except what is employed in passing undiscriminating condemnation on every imaginable alleviation of judicial abuse: including, in such his condemnation, everything which the noble and learned institutor of this commission either *has* given it him, or, unless it were in whispers, *could have* given it him, in charge to promote.

In these public documents, including the above-quoted *probationary ode* in prose, which, if *Lord Ellenborough's* ridicule - proscribing

* The Court of *Session.*

† The *Small-debt* court.

‡ Exactly as it stands, this paragraph was written on the 12th of July 1809: being some days *before* the sailing of the Walcheren expedition.

‖ Delivered March 1807. Published by *Constable and Co., Edinburgh;* and *Murray, London.* "The loser . . . . (he is there made to observe) must be disobliged at the issue of every cause . . . . . The winner . . . . sometimes . . . . thinks his conquest dear bought . . . The lawyers . . . . were often irritated, that the court did not see with their eyes . . . . Hence the sallies of satire and of scandal . . . . And to these joint causes he was willing to ascribe much of the supposed clamour of the country . . . . and *not to any material defect in our present system* . . . ." Thus far the far-famed poet: whose modesty, when confessing himself "somewhat abstracted from professional pursuits," (*ib.* p. 48.) could not save him from being selected by Lord Chancellor Eldon to carry the above avowed opinions into practice. *Not any material defect in the system!* — in a system to which alone the English system is indebted, for not being perhaps the most profligate system that ever was devised, for tormenting and pillaging men on pretence of justice!

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branch of libel law were applied to it, would be from beginning to end a *libel* — in these howsoever libellous as yet unpunished documents, having *read* what Lord Eldon *intended* should be done, and having predicted (as any man may do without the gift of prophecy) what *will* be done, let him give thanks, that no one of *Bonaparte's dukes* is as yet known to have been invited over to replace the *Duke of York:* and that if, by that noble and learned oracle of the cabinet, advice to any such effect has ever really been given, doubts, of the nature of those clouds, which never cease to exhale from the same ever-pregnant source, continue for the present to hang over it.

Accordingly, amongst similar articles of information furnished by those same papers, may be found this (p. 4): *viz.* that, "at a general meeting," (in Edinburgh) at which "the judges of the Court of Session were invited to attend . . . . several of the judges (18th March 1809) assisted . . . . when the meeting finally resolved, that . . . . the present forms are *now*, or by authority of the court itself may easily" (as easily as they always might have been) "be rendered fully adequate for the purposes of justice and *dispatch* of business, *without parliamentary interference*. And . . . . that the late division of the court . . . . has . . . . *for the present removed the necessity* of any further *innovation* upon the forms and constitution of the court."

Finally, let him give thanks, if so it be that no commission of *review* or *revision* has as yet passed the seals, directed by his Majesty to his trusty and well-beloved James Crawfurd, John Brickwood, Allen Chatfield, *John Bowles* and Alexander Baxter, Esquires, nominating and appointing them to review and revise, and finally to audit and pass the accounts of them the said James Crawfurd, John Brickwood, Allen Chatfield, Alexander Baxter, and *John Bowles*.

CHAPTER IX.

TRANSACTIONS AT THE REMEMBRANCER'S.

§ 1. *The Transactions themselves.*

WE have thus far attended our knight on his negotiation — an epistolary one we have seen it was — with the Lord Chief Baron. We have moreover thus far seen the fruit of it: — instead of the justice called for, we have seen him put off with a figure of speech: a *sarcasm* some might call it, others an *oxymoron*, made at any rate out of an Italian *epigram* in the shape of an *epitaph*, and that so old as to have grown stale: — instead of the *fish* prayed for, a *serpent* given, and with a sting too in the tail of it, though perhaps not a very sharp one.

Let us now follow him to the packing office.

Whether it was that the advice couched in the epigram had not as yet been received, or, having been received, the eloquence of it had failed of producing the effect it looked for, so it was that our Quixote Sheriff took the irregular course of doing "*better than well.*" Besides the blame — for such it appeared to him — of acting, in the teeth not only of a principle of the constitution, but of an act of parliament, he saw, or thought he saw, a penalty of £5 for every transgression, impending over his head. Raw and uninstructed as he was in the practice of *courts*, led astray by a propensity to innovation, speculation, and the false philosophy of the times, a conceit possessed him that the tide of corruption ought rather to be stemmed than swum with, and that acts of the legislature were designed rather to be obeyed than to be contemned. Misled by theories, parliament, to his fancy, presented itself as superior to judges. It was not long before his error stared him in the face.

Under such impressions it must have been that, on a certain day to this compiler unknown,* our knight presented himself at the busiest of the two Exchequer *packing offices* — the office of the *deputy remembrancer* — with the freeholders' book in his pocket: "having previously provided himself with a list of persons who had served . . . . within two terms:" *viz.* in the hope of preventing, if

* *On a certain day to this compiler unknown.*] Unfortunately, as to this point the original memoirs have left us — in the *dusk* at least, if not in the *dark*. That the *visit* of the sheriff to the remembrancer's office was antecedent to the date of his above-mentioned letter to the Lord Chief Baron, seems probable: for, though we are not expressly informed of its being so, yet as the mention made of it is antecedent to that made of the letter, such, in default of more positive information, it seems natural to conclude was the order of the facts. A circumstance, indeed, by which the force of the inference may perhaps be thought to be somewhat lessened, is — that almost immediately after comes an incident stated as subsequent to the month of July, whereas it was the month of April that closed, as well as opened, that epistolary correspondence. But the former hypothesis may perhaps be found to receive confirmation from another circumstance: *viz.* the symptoms of *pliancy* which, it will immediately be seen, were produced by, and at the time of, that visit — I mean the pliancy of that moment, when compared with the restored rigidity of later times.

Before the result of the epistolary application made to the superior was known, the personal application would hardly have been made to the subordinate. Now, in this interval, there was ample time for the communication that would naturally be made of the matter from the superior to the subordinate: and, if any such communication had been made, the compliance, the *unwillingness* of which seems pretty conclusively evidenced by the subsequent rigidity, would hardly have taken place.

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practicable, their serving again, till the time should come at which their service would *not* be an infringement of the prohibition, certainly pronounced by justice, and supposed to be pronounced by law.

Conceive who can, the surprise of *Mr. Deputy Remembrancer*, when, the figure of the sheriff appearing before him — and, with the list of over-served guinea-men in one hand, and the act of parliament, instead of a pistol, in the other, advancing upon him — he heard himself called upon, contrary to all precedent, to pay obedience to the law. This was rank innovation. this was plain jacobinism. Meantime, what was to be done? The sheriff with his instrument of terror was present: the reverend judge, with his instrument of support, his Italian tombstone, was not present. — *Our Felix trembled.* — The existence of the law was recognised, its application admitted, its authority submitted to: submitted to for the moment, though *even then* not altogether without wry faces. During the continuance of the ague fit, the instrument of terror being all the while in view, "*two juries*" were struck: and "*in striking* them, the official striker" was, "*to a certain extent*"— though only to a certain extent — influenced by this principle. Of the pockets which, *cause after cause, and* "*term after term*," had been used to come and load themselves with guineas, some, though some only, were for the moment kept at home, kept at home for awhile to empty themselves, and make room for others: others made, of course, as nearly as they could be found, of the same materials, and of the same cut.*

Obsequiousness having thus been produced — but in a quarter, and in a direction, very different from that in which by *law* (I mean by the judicial makers of law) it had been intended, and been accustomed to be produced — a natural object of curiosity will be to know what length of time so extraordinary a phenomenon continued to have place.

The obsequiousness — the compliance continued just so long as the force by which it had been produced, *viz.* the instrument of terror above mentioned, continued to be applied. The acting force being removed, *reaction* regained the ascendent. The pliancy lasted but for two *strikings:* the principle of *elasticity* displayed itself, *rigidity* succeeded, and *regularity* (I mean what in Westminster-hall is meant by *regularity, viz.* regular disobedience to law) was restored.†

The cause of this return to regularity and social order lies at no great depth. Though, between the titular remembrancer of the Exchequer and his deputy, there exists, unless by accident, no more connexion than between the emoluments of his principal and the duty on pretence of which the emoluments are received, between the pre-eminently learned chief of that judicatory and his subordinate the aforesaid deputy, the intercourse is necessarily close and intimate.

§ 2. *Instruction gained — Definitions and Maxims.*

Of two things one. Either in this office an act of parliament *is* felt in the character of a binding force, acting as a bridle upon private inclinations, or it is *not:* if it *be*, the consequence is — its force having, in the *present* instance, proved *ultimately* inefficient — some *external* force must have been employed in overpowering it; and if so, we see, without much danger of error, what that force *was:* but if *not* — if in that office an act of parliament is really *not* felt in the character of a binding force, what in that office is the state of justice?

In that *office* — thence (might have been added) in the *court under* which it acts — thence again — in the other courts *in the view of which* it acts: — but of this elsewhere.

Upon the whole, *bench* and *office* together — *doctrine* and *practice* together — doctrine leading practice, practice expounding doctrine — we may obtain, if not exactly that sort of *instruction* and *satisfaction* which an unlearned eye, unversed in the practice of courts, might be apt to look for — at any rate, a *definition:* a definition which, having for its subject a word of no *scanty extent*, and (relation being had to its extent, and the application given of it) of no *mean importance*, presents some claim to notice.

Well, considered as a *quality of action* — in any such phrase, for example, as *acting well* — is a *relative* term, involving in its import an implied reference to the *situation* of the *person* whose *agency* is considered.

On the part of a chief judge, notice having been received by him of an act of parliament prohibiting a certain *practice*, and the appli-

* "I attended," says the sheriff, "at the office of the deputy remembrancer of the Exchequer with the freeholders' book, and had previously provided myself with a list of persons who had served in causes at *Nisi Prius* within two terms. The deputy remembrancer *recognised* and *admitted* the force of the above recited clause, (4 Geo. II. c. 7, § 2,) and in striking two juries at that time was, to a certain extent, influenced by its principle." Phillips, p. 158.

† "I have since learned, however," continues Sir Richard from the passage last quoted, "that no regard is paid to the provisions of this clause, and that the juries are *still*," (on the 29th of September 1806, the day on which his publication bears date,) "struck nearly as heretofore. On examining the list of persons returned to serve on special juries in the Exchequer in the month of July, I have observed," continues he, "the name of one person serve in nine causes, of two or three in eight causes, and of several in seven or six causes," p. 159.

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cation of the act to that practice having been deliberately admitted, *acting well* consists in *defending* the practice in black and white, and after a momentary interruption, produced in another subordinate station by present urgency, *causing* it, or at least *deliberately suffering* it, to be resumed and continued as before.

On the part of a *deputy remembrancer*, — an officer occupying an office subordinate to that of the chief judge — *acting well* consists in acting, under the direction of the judge, in the maintenance and support of such supposed prohibited and illegal practice, and, after notice and recognition of the illegality, and a momentary stop put to the practice, resuming it, and with it the habit of considering the authority of a judge as superior to that of the legislature.

As to *better than well*, in the unanimous opinion of all the commentators, the use of the phrase is a flower of rhetoric — a figure of speech — some might call it *oxymoron* — others *irony;* the opinion intended to be inculcated being the reverse, or nearly so, of the meaning which on the face of the literal sense stands expressed. *Ill* is the meaning really intended to be inculcated; so that, upon the whole, the doctrine, meant in and by the epistle in question to be inculcated, may be comprised in two short and well-matched aphorisms or maxims: — he acts *well*, who *violates* the law: he acts *ill*, who either *obeys* it himself, or *calls* upon others to obey it.

PART III.

STATE OF THE PACKING SYSTEM, ANNO 1809.

CHAPTER I.

COMMONS' DEBATE, 24th APRIL 1809.
PACKING AND CUTTING.

§ 1. *Abuses touched upon — Packing and Cutting.*

THE 24th of April 1809 forms a new era in the history of this art.

Of the state of this branch of business, a corner is now unrolled before St. Stephen: — the eyes of the saint, as in these cases must sometimes happen, especially if the cry be loud and troublesome, half open themselves to the abuse: but then immediately, as usual, close upon it.

Up stands Mr. Whitbread, and more or less light is thrown upon parts, or supposed parts, of judicial practice: —

1. *Package of jurors, viz.* in the offices which we have seen established for that purpose.

2. *Bribery of do.* doubled: double guineas substituted to single ones.

3. Unobsequious jurors *dropped;* or, in the fashionable and familiar phrase, *cut.*

4. Where, under the name of the *Crown*, the firm of Judge and Co. is party, *double fees* to Judge and Co. — at whose expense need not be said.

Package — a complex process, in which, properly speaking, the operation of *cutting* is included — this, being the very thing in question, will, together with *cutting*, afford two *sections* to this present *chapter: double feeing* — an operation in *some* respects *included* under package, in *others distinct* from it, but in all respects connected with it, claims a chapter to itself.

§ 2. *Packing.*

On this occasion, amidst the uncertainties to which newspaper-reporting is liable, one thing seems pretty clear, *viz.* that, in respect of *depth* and *extent*, the nature of the mischief was misconceived: — misconceived and under-rated by the honourable gentleman, by whose public spirit the matter was thus brought forward: — "That the master of the crown-office should have in his discretion the nomination of juries," — this is what to him appeared — as well it might appear — "a great hardship." Of the state of things thus spoken of, the description thus given is thus far correct. But when the mode in which the effect is brought about comes to be spoken of, *there* it is that the description fails: "Of the persons *summoned on the pannel*, such names *passed over* as he thinks fit, without calling them on their *fines*, upon the mere plea that they could not attend, and *retaining* such names as he thought fit. . . . ."* To apply a detailed correction to the several mis-

* Words of the report of that part of Mr. Whitbread's speech, as given in the Times newspaper of the 24th of April 1809: — "He thought it, for instance, a great hardship, that the master of the crown-office should have in his discretion the nomination of juries, by passing over the names of such persons summoned on the pannel as he thought fit, without calling them on their fines, upon the mere plea that they could not attend, and retaining such names as he thought fit."

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takes contained in this part of the statement, would, after what has been said in the two former parts of this work, be a useless operation: the general result is clear enough; *viz.* that it is by a fraudulent contrivance, and *that* such a one as requires to be renewed on each individual occasion — by *irregular* practice in fraud of the law, and not by the law *itself*, as constituted by the avowed and regular practice of judges — that the "*nomination*" and nullification of these supposed and pretended checks upon the despotism of judges is effected.

Of these errors the origin appears sufficiently obvious. Though in several points not conformable to the view given of the case by Sir Richard Phillips, there remains conformity enough to render it probable, that it is from *his* representation of the matter, as given in his book, that that of the honourable gentleman was taken. I mean the "*passing over*" — and "*upon the mere plea that they could not attend*" — and so forth. By this the conception conveyed (we see) is — that, taken in its totality, the *gross list* comes into the master's hands from some *other* quarter: and that all that it is in *his* power to do is — to cause to be *discarded* out of it this or that individual; and that even *that* cannot be done in any case, without a *fresh* as well as *false* pretence: whereas, as we have seen over and over again, the truth is — that, of the persons whose names are put upon this *gross list*, every individual, without exception, is *constantly* and *regularly* chosen by him, and that if, for ridding it of this or that obnoxious individual, any such pretence should happen to be necessary, it is not by *him*, by that officer, who in regular course nominates whom he pleases, that any such falsehood need be, or indeed could consistently be, averred.

As to Sir Richard Phillips, happily for the public he neither was, nor ever had been, a lawyer: on the particular occasion in question, he plunged not — *time* would not have suffered him to have plunged — into any such fœtid mass of *dead* letter, as the labyrinth composed of the *books of practice*. He did — what in his place every non-lawyer would have felt the necessity of doing — he betook himself to the *living oracles* of the law, such as were within his reach; and what their *responses* were has been seen in another place: the point here in question is of the number of those which may there be seen involved by them in some of their gilded clouds.

To what purpose these two paragraphs? to serve as a critique upon a newspaper? — No: but to show that the *real* complexion of the ulcer is far more angry than that which it then presented to the eye of the honourable gentleman: that the real depth of it had not then been sounded by him: and that it continues to call, and with increased energy, for the renewed and more serious exertions of his *healing*, but in the first place of his *probing*, hand.

Had it not been for *irregularities*, as we have seen — some but *supposed*, others, as we shall see, real — the subject, as far as upon the face of this report it appears, would never have received a visit from those experienced eyes, which reflect so much useful light on every subject on which they fix. For this, wherever *law* is concerned, is the general error: ascribing whatever is amiss — not to *regular* practice, but to *irregularities*: not to the system, but to A or B, to whom on this or that occasion it happens to be acting under it. This is the grand error of errors — supposing regular practice to have had not only *justice*, but justice alone, for its object; whereas it never *has* had justice for any part of its object, nor, in the nature of men and things, circumstanced as judges have been, ever *could* have had.

§ 3. *Cutting.*

On the subject of *cutting* and *being cut*, up rises *Mr. Marryat*, and speaks of *one* person, *viz.* himself, to whom, after verdicts given against the crown, no such accident had happened: and there the *evidence*, or at least the report, as above given of it, stops.* But, stopping there, it proves nothing. It has already been stated (Part I. Chap. IV. § 4,) that verdicts after verdicts may be given against the crown, and to every officer that ever calls himself *the crown*, the event of the cause be, personally speaking, a matter of indifference. On a question of revenue, where is the chancellor of the exchequer — where is the solicitor of the treasury, customs, excise, stamps, assessed taxes, or any other board, who, any more than the honourable gentleman himself, would wish for a verdict against evidence?

Up already had arisen *Mr. Attorney-general:* and here, in the person of this great law-officer, may be seen the *prudence* of the *serpent* hiding itself under the *simplicity* of the *dove:* — "With respect to the partial summoning of jurors, as he himself did not summon them, he would not" (says the report) "undertake to say anything of the fact from his own knowledge." As to *summoning*, that must have been the mistake of the *reporter: summoning* could never have been the word of the *great law-officer*. As to great law-officers,

* *Mr. Whitbread*, as per *Times*.] "Another practice he understood to prevail was — that *special* jurymen, who had been summoned over and over again, if ever they found a verdict against the crown, it somehow or other, happened, they were never summoned afterwards.

Mr. Marryat, as per Do.] "He was frequently in the habit of being summoned as a special juror. He had frequently found verdicts as well against the crown as for the crown, and he never experienced any difference on that account."

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what *may* happen to their *science* is — as to mere matters of *fact*, to put on the mask of *ignorance*: what *never* happens to it, is — to misapply law words. *Nominating* is the *word*, as well as the *practice*, here: and to the great law-officer in question, most assuredly it never had happened to *nominate*, any more than *summon*, a single juror in the whole course of his life. But, of the *seven* offices belonging to the three courts, there is not one but what has its officer (already designated so often by the name of the *master packer*,) by whom this nomination, as so often mentioned, is regularly and avowedly performed: nor is there more than one, if so much as one there be, that has not its *book* or *books of practice*, in which this *nomination* is regularly mentioned as being so performed.

If the practice of the courts in which they practise, and the books in which that practice is delineated, be to such a degree a secret to *great law-officers*, can it be wondered that they should be equally so to *lay-gents*, such as *sheriffs* and *members of parliament*?

So much for *ignorance*: the quality of the person considered, I should have said *nescience*: nescience, the *cause* or *accompaniment* of so amiable a quality as *simplicity*. We come now to *confidence*, the *result* and *fruit* of it.

"But he was confident" (continues the reporter,) "that any officer of the court, who would venture on such a practice, would *certainly lose his place*." Thus far the great law-officer.

For my part, the confidence of which *my* ignorance has been productive, is as strong as his can possibly have been: it is, however, of a nature exactly opposite. In *each* of the *seven* offices there is but *one* officer, by whom (unless it be, as we have seen, by his deputy, (*See* Part I. Ch. VIII. p. 101,) jurors are *nominated*;—(I should have said, *or are supposed to be nominated*;) and he (as we have seen) is the officer, who, by whatever other titles designated to *other* purposes, is to *this* purpose commonly styled *the master*. But, were there a hundred of them, there is not one, who, for any such practice as the practice here, though improperly, designated under the name of "*a partial summoning*" — say partial *nomination* — of jurors, could by any *possibility* be made to "*lose his place*." The nature of the case does not admit of it: the very nature of the case — unless any such odd accident should happen to the officer as that of having an Italian epigram, ready cocked, which he wants to bring down *a reformer* with—the very nature of the case, as we have seen, *excludes all evidence*. *Stiles, Esquire*, for example, is among those *nominated* by the *master* in *Easter* term: *said Esquire* is *not* among those nominated by said master in *Trinity* term. Make what addition you please to the number of terms, during which poor Mr. Stiles sees himself *not* nominated, — what is there in all this to make the master, or anybody else, "*lose his place*?" Not that, if the place *could* be lost, it would be any such great person as a *master* — it would be (as we have seen) some scape-goat or other in the shape of a *clerk*, that would be sacrificed upon the altar of *official prudence*.

No: — this is the grand use and exquisite contrivance of corruption in this shape: *viz.* that, be it ever so corrupt, it is impossible to punish it—aye, or so much as to point suspicion to it. Pleasant conceit indeed! A master lose his place! In any court of common law, from the days of *Lord Coke* — aye, or of "*the English Justinian*," *Edward the First* — did the great law-officer ever hear of so much as a single case, in which, for mal-practice, in this or any other shape, any such personage as a master ever "*lost his place*?" — did he ever hear of so much as the rumour of any such case, to form a ground, or so much as a colour, for such confidence?

No: this is not the way that *alma mater lex* deals with her own children. *Ah! fie upon it, darling! Dear child, you must not do so any more!* Do what mischief they will, this is the very worst they ever hear from her, if on any such occasion, even in an age, or any number of ages, it ever happens to them to hear anything. Let him look to the statute of Hen. VI., 10 Hen. VI. c. 4, and see 32 Hen. VIII. c. 30, 2 and 3 Ed. VI. c. 32, and 18 El. c. 14. Masters, and their brother officers, with the assistance of feigned plaintiffs of their own feigning, *outlawing* men by wholesale — taking all this trouble, and to no other purpose than that of seizing their estates, and distributing the produce in the shape of rewards for merit: for learned merit, displayed in these same offices by these same acts. Parliament takes up the matter, and what does it? It passes an act, saying to all these learned persons — "*Go and do so no more*."

A master *lose his place* indeed! What! a place that he had purchased — purchased outright — of a chief judge! What, if such a thing were to happen, would be the worth of any of these *masters'* places, not to speak of *judges'*? *Lord Arden, the Earl of Buckinghamshire, the Earl of Hardwicke, Lord Kenyon, Sir William Scott, Mr. Perceval, Lord Erskine, Lord Redesdale*, the pair of *Honourable Knoxes*, the pair of *Lord Seymours, Lord Manners, Lord Eldon*, and above all Lords, *Lord Ellenborough* — could it rationally be supposed, that these or any other illustrious persons concerned, whether in the character either of *incumbents* or of *patrons*, past, present, or future contingent, in the security of official situations, would suffer, especially if non-feasance were to be taken

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as a cause of forfeiture, any such injustice to take place? Where then would be their Lordships' plighted faith — the virtually and virtuously plighted faith: plighted by learned Lordships to fair purchasers?

CHAPTER II.

DOUBLE-FEE ABUSE, PLAIN AND EMBROIDERED.

§ 1. *Ground and Embroidery explained.*

THE distinction requires explanation; and explanation shall be given to it.

Double-fee abuse *plain* — (or, as but for the apparent contradiction, it might have been called, *simple*) — mere waste of public money — nothing worse.

Embroidery to the abuse, *corruption* of *jurors*, and *contempt* of *parliament*:—in a particular case, the wasted money, the *second* of *two* guineas, receiving so particular an application as to operate, in the character of a portion of the *matter of corruption*, upon a certain class of jurors: and this in defiance of an act of parliament, *viz.* of a clause (24 Geo. II. c. 18, § 2) made for the express purpose of fixing upon *one* guinea — and that not as the regular fee, but as the very greatest fee, that, by jurors of that description, shall, in any case, be received.*

From the several crown solicitors, attached to the several boards, double-fees to the law officers: *viz.* to the officers in the several offices belonging to the several courts of justice which they have to deal with: — judges, in their *own* persons, included or *not* included; in the persons of their officers, whose fees they pocket, or derive a profit from in other shapes, included beyond doubt. And here we see the *plain* and *simple* abuse.

From the same hands, to each special jurymen, where the verdict in which he has concurred has been in favour of the *crown*, an extra guinea: where it has been in favour of the party, no more than the *one* guinea: the *extra* guinea being given in the teeth of the act, which *forbids* the giving more than one: and here we see, combined in one rich mass of embroidery, the *corruption* applied to *jurors*, and the *contempt* put upon *parliament*.

§ 2. *Double-fee Abuse, plain:—mere Waste.*

But for the embroidery of which it forms the ground, and for the explanation of which the mention of it is necessary, the plain abuse — the mere waste of public money — would scarce be deemed worth a word or a thought *anywhere*: nor indeed would it be in its place *here*.

As to our great law-officer, whom we shall presently behold breaking out into a burst of "virtuous indignation, rising even to *abhorrence*," he had none to spare for a practice so excusable, or rather so meritorious, as that of applying *double-fees* in the shape of rewards of merit, to merit personified in the persons of law officers. To these law-officers — officers, the profits of whose offices find their way in so ample a proportion into the pockets of noble and learned tenants for life, whose *remainder-men* are great law-officers. To this charge we have nothing but his silence; nor need anything more be desired considering the admission it involves.

Thus much, then, is established: *viz.* that it is become *regular* practice for the Lords of the Treasury, in every cause instituted by a crown solicitor under their direction, to give out of the taxes to every law-officer twice as much as according to a rate settled by those whose interest it was to raise it as high as possible — twice as much as, even to an estimate thus exaggerated, his services are worth: including, in every instance of an office executed by deputy, the fee of the principal, by whom the reward is pocketed, without the expense of service.

A list of the law-offices and law-officers thus remunerated would, in one way or other, be instructive.

The admission might have been as express as words could make it, for any thing that any body could have had to fear from it.

When a *tax* has been called a *tax*, *John Bull* has now and then been heard to grumble. Call the tax a *fee*, he is satisfied: so as the contribution be but imposed by the men by whom it is pocketed, pocketed by the men by whom it is imposed, *Blackstone's* motto is *John Bull's* — "*every thing is as it should be.*" But, if the imposers are judges, and the persons on whom it is imposed are those children

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* *Simple dissipation abuse.*—Mr. Whitbread, as per Times.] "Another practice he understood to be uniform with courts; namely, that the crown always paid to the officers double fees."

Corrupt and contemptuous abuse.—Do. as per do.] "Further, he was informed that where a special jury found a verdict for the crown, it was usual to pay each man two guineas; where the verdict was against the crown, they received but one guinea per man."

The contempt consists in a violation of a clause limiting the fee to a guinea in all cases: of which clause somehow or other, in the speech, no mention appears to have been made.

Words of the act (24 Geo. II. c. 18. § 2.) "Whereas complaints are frequently made of the great and extravagant fees paid to jurymen" (special jurymen) ". . . . no person who shall . . . . serve upon any jury . . . . shall *be allowed to take* for serving on any such jury more than the sum of money which *the judge* who tries the issue or issues *shall think just and reasonable*, not exceeding the sum of one pound one shilling . . . ." Thus saith the law.

N. B. In practice the judge never "*thinks*" anything about the matter. The utmost sum thus allowed to be given in any case being as of course given in every case, he is never called upon to think about it.

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of affliction called *suitors* — patients with emptiness in their pockets, and perpetual blisters on their mind — then it is that he is not barely *contented*, he is *delighted*: he cries "*litigation is checked*:" some men not being able, others not willing, to see, that in this way, wherever there exists a man, rich as well as wicked enough to purchase the power of oppression thus offered him for sale, it is only the honest and injured litigant, or he who, if the ability were left him, would be litigant, that is thus *checked*, and that the dishonest litigant is instigated, supported, armed, by this most mischievous of all taxes; every fee exacted from the other side being an instrument of oppression put into his hands.

§ 3. *Embroidery — Corruption of Jurors, Contempt of Parliament.*

We now come to the abuse in which the indignation of the great law-officer saw its proper and safe mark: an abuse of former times, supposed to have vanished with the times.

"Further," says the report, speaking of Mr. Whitbread, — "further he was informed, that when a special jury found a verdict *for* the crown, it was usual to pay each man two guineas; where their verdict was against the crown, they received but one guinea per man." Here we see the *charge*. Come we now to the great law-officer, and his *answer*:

"Mr. Attorney-general," says the report, "in reference to Mr. Whitbread's assertion, respecting the two guineas given to special jurymen in cases of verdict against the crown .... [and the usage of discontinuing to summon special jurors who should once give a verdict against the crown] utterly denied the existence of such practices in any of the courts within his memory."

So far the great law-officer. As to the passage included in brackets, it is thus distinguished, on the presumption that, so far as concerns *this* practice, the supposition of an utter denial must, for the reasons already given (Chap. I. § 3,) have been a mistake.

"He believes, indeed," continues the report, "the former practice did sometimes take place, many years since, in the court of Exchequer; but had never occurred for a great number of years, and it was a practice which he *abhorred*, as disgraceful to the administration of justice."

And so there was really a time when corruption in this shape was in use? And this corruption applied to the very class of persons — to the very class of jurors — which there has been such abundant occasion here to speak of: the very jurors CONCERNED, "*deeply concerned*" in "the guinea-trade?" And the corruption had not, as in the case of double fees to *law-officers* (meaning, we may presume, *all* the law-officers without distinction, and upon *all* occasions) the praise of *regularity* for a cover to it? No:—it was given to them or kept back from them, according as they had behaved — according as they *had* or had *not earned* it.

As to the court in which this "abhorred" and "disgraceful practice" was so recently in use, it is the court of *Exchequer* — that very court, in which, in the opinion of the pre-eminently learned manager himself, things go on (as we have seen) so well — so "*well*" — that the idea of making them go on "better" is treated by him as something *worse* than needless. It is the very court in which recruits for *this service* are received and trained, and their "characters" if not put on *record*, had in "*remembrance*" at least, for *other* services.

And this practice, thus "*abhorred*" by the Attorney-general as "disgraceful to the administration of justice," how came it in the court of Exchequer, or in any court calling itself a court of justice, ever, and so recently too, to have place? And supposing it not to have place *to-day*, is there anything, and what, to prevent its having place again *to-morrow*? Whatsoever the causes may be, is there anything unreasonable in the supposition, that the same *causes* may at any time be productive of the same effects? Not that any such renewal presents itself as a very probable occurrence: for the grand object, *viz. dependence* — complete and absolute dependence — being by this time so effectually secured, as it appears to have been, and in so snug and quiet a way, corruption in any such barefaced shape would be altogether needless; and the danger of and from exposure, remote as it would however be, is more than, by learned prudence, would, when unsweetened by any ulterior advantage, be incurred.

Thus much for the *corruption*. But in the corruption, *bad* as it is, we do not by any means see the *worst* part of the business.

The worst part of the business is the contempt — the open contempt put upon *parliament*: disobedience, such as it is impossible should not have been *wilful*, manifested as towards one of its recent laws. Here we see the axe laid to the very root of government: and by what hands? Not by *jacobins* and *levellers* — not by men who meet at taverns, and get up upon *tables*; but by the very husbandmen themselves—the very nursery-men, by whom *Mr. Reeves's* tree — (the tree that was so near falling upon his head, and without falling on it prepared it for so many good plaisters) — the very nursery-men by whom that nutritious and umbrageous sugar-tree ought to have been nursed, and who are so well paid for nursing it.

But of this most serious *state* offence — this dissolution-threatening offence — in comparison of which so ordinary and *regular* an

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offence as corruption shews, in the eye of a *really* loyal subject, but as a peccadillo, more will be said in another place. (*See* Part IV. Chap. III.) Be it meantime remembered, that the fact is established.

Other facts, not altogether devoid of importance, remain to be affirmed or disaffirmed by inquiry and evidence.

By what *hand* was it that the *bribery* guinea — the additional and *prohibited* guinea — was put into the ready hand of the Exchequer *guinea-men*, in despite of the statute? This is a question, the answer to which, but for form's sake, needs no evidence. That of the *solicitor*, of the *board* whichever it was, under the orders of which the prosecution was, in each instance, ordered.

Two other questions:— The *master packer*, and the *master packer's master* — the deputy remembrancer, and the Lord Chief Baron — were they respectively apprized of it?

At what *time* was it that this "abhorred" practice *did* sometimes take place — how many were these "*many years since*" it was known to do so?

In whose chief baronship was it? In that of *Eyre* — in that of Skinner — in that of *Smyth?* — or in any part of the thirty years presidency of the old attorney, knighted and made honest — as honest as to an English judge it is possible to be — by the title of Sir Thomas Parker? Or was it at any time under the presidency of the *present* Lord Chief Baron, of whose services in that high station the country has had the benefit now for above these sixteen years:* if yes, whether it has been with *his* privity that any particular individual instance of this practice has taken place, and whether this has been among the means employed by him for the attainment of the object so effectually accomplished, and so solicitously defended? †

These are among the "*secrets*" which may perhaps present themselves as "worth knowing," whensoever *Mr. Whitbread*, refreshed by a summer recess, shall feel himself sufficiently refreshed to return to the charge; to return to the charge, and by one pull more — one pull, sufficient in *length* as well as strength, drag them completely and effectually out of the den of *Cacus*.

Should it ever happen to the great law-officer, on any future occasion to get up, and come out with a speech of a mixed nature such as the above, composed of part argument, and part evidence, Mr. Whitbread, or whosoever on any such occasion may occupy his place, will perceive, I am inclined to think, the use and propriety of decomposing such speech, and resolving it into those its component elements. As to the *argument*, it need not give him much trouble: *that* may be left to answer itself. But the *evidence* is quite another thing: here he will see the use and necessity of that useful operation called *cross-examination*. I don't mean, that even upon the great law-officer himself, it should be performed in his *own* mode: of that it would surely be better to leave the monopoly in his own hands. I don't mean, that he should be called "*the greatest fool that ever walked over earth*" with or "*without a keeper*."‡ I don't mean, that he should be examined for no other *purpose* than to expose to contempt the *witness*, nor with any other *effect* than to expose to the same fate the *examiner* and the *judge:* the examiner who *makes* such examinations, and the judge who *suffers* them. What I mean is, that he should be examined — cross-examined — in whatever mode may happen to be best adapted to the getting out the truth: — which surely will be a very different mode.

* Ever since 12th February 1793.

† Turn to *Palmer on Costs*, pp. 175, 180. In a *bill of costs*, exhibited throughout in the character of a *real* bill — not a *feigned* exemplification of a bill — name of the cause, *The King against W., scire facias* in the *Petty Bag* (common-law side) in the Court of Chancery, may be seen a charge of £25 : 4s. This makes exactly the two guineas a-piece, stated as having been given to the special jury. Mr. *Law* (now *Lord Ellenborough*) is stated as having been one of the counsel in the cause: the others being *Mr. Erskine* (now *Lord Erskine*) *Mr. Mingay*, and *Mr. Garrow*. Mr. *Law*, as being of the *special pleading* class, may be seen to have been more frequently consulted with than any of those other learned persons. This bill of costs having, for the purpose of taxation, passed of course under the review of the *master* (the master packer,) here we see a particular example of the open contempt put upon the act above mentioned — (24 Geo. II. c. 18, § 2) — by which the giving or taking more than one guinea stands prohibited, as we have seen, in the most pointed terms. Of the individual instance of contempt thus accidentally laid open to view, the date is in the year 1785.

‡ "*Attorney-general* . . . . First we have *Sir Richard Phillips*, who has given us evidence of his being either one of the greatest fools that ever lived under the sun, or that he is not to be credited on his oath. I say it appears from his own testimony, either that he has given us false evidence, or that he is the greatest fool that ever walked upon the face of the earth without a guide.

"*Lord Ellenborough* interposing. — Weakest, perhaps weakest.

"*Attorney-general.*—The weakest man that ever walked upon the face of the earth without a keeper." *Carr against Hood and Sharpe. Cobbett's Register*, *Sept.* 17, 1808.

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PART IV.—REMEDIES PROPOSED.*

CHAPTER I.

HUMBLE PROPOSAL FOR RESTORING THE CONSTITUTION IN REGARD TO JURIES.

§ 1. *Introduction—Necessity of a Change in the System.*

In the course of this inquiry, two dangerous diseases have necessarily and continually been brought to view:—1. A rottenness in one of the most important organs of the body politic, viz. jury-trial; 2. A sort of *weakness* about the *head*, having for its symptoms, on the part of *judges* and other subordinate members of government, a confirmed, habitual, and scarcely disguised contempt, as towards the authority of the legislature.

The existence of the disease having, in both instances, been brought to view, next comes the more immediately beneficial task, but for which that unpleasant one would never have been undertaken, viz. the indication of the proper remedy.

In *this* chapter will be proposed, what presents itself as proper to be done, in regard to *juries*.

That within the sheriffwick of the sheriffs of London and Middlesex, the institution of *special* juries, composed as at present, ought to be *abolished*—is supposed to have already been sufficiently demonstrated. If so, the consequence is—that within this district some different system will require to be set on foot. But, forasmuch as the establishing in one particular district, though it be the district of the metropolis, a system different from what is in use in the greater part of the kingdom, might, by infusing additional complication into a system of judicature already so overloaded with complication, be productive of preponderate inconvenience; hence we are led to the consideration of some plan which, being grounded on *principles* universally applicable,

* The following are the chief alterations made, and suggested from authority, on the practice of choosing special juries, since the work was published:—By 6 Geo. IV. c. 50 (22d June 1825,) the law was to juries in England were consolidated, and the statutes enumerated in p. 76 3 Geo. II. c. 25; 4 Geo. II. c. 7; 6 Geo. II. c. 37; 24 Geo. II. c. 18; and 29 Geo. II. c. 19, repealed, so far as they concerned the subject. By § 31, every man described in the juror's book as an esquire, or person of higher degree, or as a banker or merchant, is qualified and liable to serve as a special juror. All such persons are to be described in a separate alphabetical list subjoined to the jurors' book, called "The Special Jurors' List." The names being numbered in their alphabetical order, the "numbers are to be written upon distinct pieces of parchment or card, being all as nearly as may be of equal size," and deposited in a separate drawer or box. By § 32, when a special jury is struck, in the presence of the parties or their attorneys (if they choose to attend,) the slips containing the numbers are put into a box, and after being shaken together, drawn out, one after another, to the number of 48, the name attached to the corresponding number in the special jurors' list being read aloud as each number is drawn. If, on the reading of a name, either party or his attorney object that the man is incapacitated, on proof, he will be set aside, and another drawn in his place. If the whole number of 48 cannot be supplied from the special jurors' list, the general jurors' book is to be resorted to as formerly. Parties are supplied with a list of the 48 names, with the respective places of abode, and additions, and are allowed to strike off twelve names each as formerly, the remaining 24 being returned upon the pannel. By § 33, parties may consent to the nomination of a jury in the manner formerly in use.

By the third report of the Commissioners on the Courts of Common Law (ordered by the House of Commons to be printed 13th July 1831, p. 65,) it is given as their opinion that "the present practice with respect to special juries seems to require some improvement. The expense of a special jury amounts to no less than £22; an amount which proper provisions might materially reduce. The difference between this expense and that of a common jury (a difference of not less than £20) falls upon the party who applies for a special jury, unless he should be successful, and the judge should in that event direct it to fall upon his adversary. By the former acts, the certificate to be granted by the judge for this purpose, is to be granted immediately after trial; but by the last act he is to certify immediately after the *verdict*—a provision which obviously requires alteration, because in case of a *nonsuit*, it excludes the defendant from the possibility of obtaining the costs of his special jury. A very unnecessary degree of inconvenience also falls on the class of persons out of whom the juries are selected. Thus, if five or six special jury cases are appointed to be tried at the same assize, as each has a separate pannel taken at hazard from the special jurors' list, it may happen that not less than from 120 to 144 persons are summoned." To obviate this, it is recommended that there be one special-jury pannel, as well as one common-jury pannel (consisting of not less than 48 nor more than 72,) returned for each sittings or assize. It is proposed that the fee of one guinea to each special juror should be abolished, and in addition to the relief by the above arrangement, it is suggested that no person should be again returned who has served within a certain period. In case of such an alteration, the right of peremptory challenge is recommended; and "in order more effectually to prevent the vexatious abuse of the privilege of trying by special jury (which upon such a change of system might become of more frequent occurrence,) it should be provided that no cause should be so tried until an order had been made for that purpose by a judge, founded on an affidavit as to the nature of the cause."—*Ed.*

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may *itself* be susceptible of an application equally universal, without preponderant inconvenience.

The remedy here ventured to be proposed is styled without scruple a *restorative:* a plan for the restoring, for the purpose of *jury-trial*, the original composition of juries. Not that the plan is such in exact tenor and detail: for, if it *were*, it could not be such in principle and effect.*

All political institutions would be exposed to deterioration, were it even by the mere change of circumstances: and if, where the change of circumstances is become material and extensive, the original constitution is left unchanged in detail, the consequence is — that, howsoever in words and outward show it may be the same, it is become in substance and effect, in a proportionable degree, different. Nor yet would I have it thought, that in my vocabulary *old* is synonymous to *good*, or *better*, as in some vocabularies we have seen it, synonymous to *not so good* or *bad*. Be the state of things ever so good, to render them still better is, in my view of the matter, a *good* operation, not a *bad* one: the contrary opinion I leave to those in whose eyes the praise of letting off an old epigram is better worth than the consciousness of having rendered, or the endeavour to render, a public service.

Accordingly, in the endeavour to bring about a restoration of the jury system in *principle*, I have not in detail neglected the opportunity of endeavouring to put it, for the future, into a state as much superior as possible to any state it ever was in before.

As to the existing *special* jury system, my real quarrel with it is — *not* that it is a *different* one from the original jury system, but that, in comparison with it, it is a *bad* one.

§ 2. *Interests to be provided for — Objects to be aimed at.*

For remedy to the disorders in question, before we enter upon the task of suggesting particular arrangements, it may be of use to have before us a distinct intimation of the several *interests* requiring to be provided for, and, for the purpose of such provision, of the several *objects* or *ends* requisite to be kept in view and aimed at — *viz.* in the framing of a plan for the composition of jurors, the selection of the jurors, and the compensation, if any, to be made to them for their labour, loss of time, and expense.

The *interests* concerned are, in the first place, those of the *suitors* or *parties* on both sides of the cause; in the next place, those of the *jurors* themselves.

It is for the sake of the *interests* of the *parties* in each cause, — or rather of such party or parties as are in the right, *viz.* in so far as he or they are in the right, — that it becomes an object with the legislator, to make such provision as the nature of the case admits of, for securing, on the part of *jurors*, such degree of relative aptitude, in all points, *intellectual* as well as *moral*, as shall render the general tenor of their decisions as conformable as possible to the ends of justice.

Follows a brief intimation of these objects, ranged under three general heads: —

I. *Objects referable to the head of* probity *or* moral *aptitude.*

1. Preserving jurors as effectually as possible from exposure to the action of such sinister influence as is liable to be exercised by, or to emane from persons *in power;* and more particularly by or from the presiding and directing *judge* or *judges*, as above.

2. Preserving them, as above, from such sinister influence, in the shape of intimidation, corruption, or partiality, as is liable to be exercised by, or to emane from individuals or classes of men, in the character whether of parties or of persons having in any other way an interest in the event of each respective cause.

II. *Objects referable to the head of* intellectual *aptitude.*

3. In a judicatory so composed, providing, *upon occasion*, a degree of extra-aptitude, in respect of *intellectual* qualifications; *viz.* in consideration of, and in proportion to, any degree of extra-*difficulty* attached to this or that particular cause.

4. —— or in consideration of, and in proportion to, any degree of *extra-importance.*

III. *Objects having respect to the interests of the* jurors *themselves.*

5. Reducing to its *minimum* the quantity of *vexation* and *expense* attached to judicial service in this line.

6. Providing compensation for such portion of vexation and expense as cannot be avoided without preponderant inconvenience: *viz.* without preponderant prejudice to the *main* object above mentioned.

§ 3. *Arrangements proposed:* — 1. *In Common Jury Causes, mix Gentlemen with Yeomen.*

Here follows a slight sketch of the arrangements that present themselves, as promising to be conducive to the attainment of the above objects: in case of *conflict*, regard being had all along to their respective degrees of importance, *absolute* and *comparative:* —

* *Eightpence*, for example, was the allowance given to a juryman, as long ago as in the reign of James I. (see Part I. Chap. IV. § 1,) and we know not for what length of time before. Give him eightpence at this time of day, the allowance, besides being in *name* the same, may be a more or less proper one, but in *effect* so far from being the same, it is a very widely different one. And so, as often as *money* is concerned, and on whatsoever occasion and for whatsoever purpose mentioned — take, for example, *qualifications for parliamentary electors.*

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1. The distinction between common and special jurymen to be still preserved. The *object* aimed at by this arrangement is — provision for *intellectual aptitude.*

2. In *ordinary* or *common jury cases* — *i. e.* in those cases in which at present the jurors are all of them of the class of common jurymen (say, for distinction, *yeomen jurymen*) — let some one or two of the class of special jurymen (say, for distinction, *gentlemen jurymen*) be regularly inserted into each jury. — *Object*, intellectual aptitude — *viz.* under the expectation, that, for the benefit of justice, the influence of understanding upon understanding will exercise itself, of course, upon the *less-informed* class, by the instrumentality of the *better-informed.*

3. Number of gentlemen jurors, not more than one or two. The *interest* provided for by this restriction is that of *jurors.* — *Object*, avoidance of unnecessary *vexation* and *expense*: *viz.* of vexation and expense, by reason of attendance; *viz.* on the part of an over-proportion of jurors of this class.

4. The district in which the gentlemen jurors are taken, let it be a district as remote as on other accounts will be consistent with convenience, from the district in which the yeomen jurymen are taken. — *Object*, providing for *moral* aptitude on the part of yeomen jurors, *viz.* by preserving them from being subjected to sinister influence — *viz.* to influence of *will* over *will* — whether in the shape of *intimidation*, or in the shape of *corruption* — emanating from gentlemen jurors. At the hands of the gentlemen jurors — of the men of superior education — the *salutary* species of influence — *viz.* the influence of *understanding* over *understanding* — of opinion on opinion — is looked for and desired. The use of the *distance* proposed, is — to serve as a bar to the exercise of *will* over *will.* To men of the yeomen class — to shopkeepers, handicrafts, &c. living in the same neighbourhood with the gentleman, it might frequently happen to view in his supposed disposition towards them a source of hope or fear. By distance, this source of corruption would be cut off.*

§ 4. *Arrangements continued* — 2. *Special Juries, half-and-half.*

Power to any party, on either side, to cause to be substituted to the common jury composed as above, a *half-and-half* jury;† *viz.* a jury — not composed of *all* gentlemen, as in the case of the special jury constituted as at present — but containing any number of gentlemen not exceeding half: *viz.* out of *twelve, six.*

The *interest* thus endeavoured to be served is, of course, that of the *suitors*: the *objects* endeavoured to be secured, are, in the first place, by the enlargement of the number of the gentlemen jurors, *intellectual* aptitude: *viz.* by adding to the chance of finding a jurymen qualified in an extra degree for taking the lead, and guiding the decision: in the next place, by the *restriction* put upon the number of the jurymen of that class, *moral* aptitude: *viz.* by preventing the preponderance of partiality as between rank and rank.

Of the sort of mixture here proposed, the importance is such as seems to claim a particular degree of development. In every species of judicatory without exception, but in a more pre-eminent degree in every judicatory of which a *jury* forms a part, of all imaginable causes of misdecision, what is commonly understood by the term *partiality* is that which the legislator finds greatest difficulty in coping with. Wheresoever the nature of the influence — the sinister influence — supposes *two* parties — one acting, the other acted on — his task is comparatively an easy one. All that in *that* case he has to do, is — to keep them from coming together: and, with a moderate degree of probity, exertion, and intelligence, how easy *that* is, may have been seen already.

But the case of *partiality* supposes not any such parties: it supposes not any tempter from without. The tempter dwells *within* — within the very bosom of this occasional judge; and, being there, in vain would legislators dislodge him: he bids defiance to their utmost efforts.

Religion or *politics* — if, by the nature of the case, any such cause of dissension happens to be called forth — called forth in such manner as to excite, in the bosoms of any of the

* The line of distinction being, in present as well as in all past times, so extensively as well as decidedly drawn — drawn in *name* as well as in correspondent *practice* — no objection can surely be raised against it, on any such ground as that of a tendency to keep alive and foment invidious distinctions. In these our *fortunate islands*, the *yeoman* of *to-day* being the future contingent *gentleman* of *to-morrow*, no such heartburnings have place between them, as in those countries in which a vast and unvarying gulph has place betwixt the two classes.

† *Half-and-half.*] *De medietate status*, is the learned denomination, but for my part I prefer this English one: and this although it be, or rather because it is, so vulgar an one. In every part of the field of law, the interest, and thence necessarily the endeavour of all lawyers, has been to render the rule of action not only as *uncognoscible* but as *unintelligible* as possible. Of every friend to mankind, the endeavour, it scarce need be said, will be the reverse. As to the science of jurisprudence, and the art of legislation, for teaching and learning these accomplishments, the aid of this foreign and extinct language may here and there perhaps be necessary: and necessity, so far as it exists, *may*, but nothing short of necessity ever can, justify any such use of it.

As to the epithet *half-and-half*, among *publicans* at least, it would be difficult, I imagine, to find a man to whose ear it were not familiar — and therefore probably among the greater part of their guests.

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jurors, sentiments — whether of sympathy or antipathy — in relation to the parties on each or either side — against this source of *partial* affection — of *corrupt* affection (as, even though there be no corruptor, it may be styled) — against this source of *misdecision*, all that in the station of the legislator can be done by human wisdom is here without avail: in *this* shape, *corruption* may have established in a man's bosom ever so complete an empire — *there* it must reign, and reign uncontrouled: you can never punish it, for you can never prove it.

Among jurymen, a possible, and not unnatural, source of *partiality*, on either or both sides of a cause, and thence of *dissension*, is that of which difference of rank and station in life is the instrument.

With partiality and dissension in this shape, the proposed *half-and-half* jury, as well as any other jury, stands exposed to be infected: and indeed, by the nature of its constitution and composition, may appear, and not altogether without reason, to be exposed to that accident in a particular degree. But while it contains in itself the seeds of the disease, it furnishes at the same time a remedy: — a remedy — such an one as cannot in any other mode be supplied.

Take, for example, a case, such as, in the country at least, where there is no guinea-corps, is frequently exemplified — a *special* jury, with a deficiency in it made up by yeomen: by *common* jurymen, in the character of *talesmen*. Suppose, as between a gentleman and a yeoman, a cause so circumstanced as to awake, in the bosoms of these different parts of the population of the jury-box — to awaken, and to excite, to a degree of excitation fatal to justice, the passions and partialities congenial to their respective stations. In this case, let there be *seven gentlemen* to *five yeomen* the gentleman carries it. But — suppose *six* and *six*, as under the proposed constitution will constantly be the case — in this case, partiality may reign without opposition in eleven bosoms, so as one of the twelve, even though it be but one, be the seat of cool and impartial justice: he who has *right* on his side, be he gentleman or yeoman, gains the cause.

Of the proposed provision, by which the number of gentlemen jurymen even on a special jury is limited to *half* the whole number, *viz.* to *six* out of the *twelve*, the expected use is as follows: — In ordinary cases, for the purpose of guidance, by means of intellectual aptitude, one or at most two, was, as above, (§ 3) regarded as sufficient. For this same purpose, the additional chance, afforded by the substitution of *six* to *two* or *one*, may, it is supposed, be regarded as amply sufficient, even in any the most extraordinary cases.

As to the case of a contention between opposite *classical* partialities, a case of this sort, it is hoped and supposed, will, comparatively speaking, be a rare one. But, that it should now and then find itself exemplified, is no more than what ought to be expected, and provided against accordingly.

Here, then, comes in an occasion, for applying to this case that beautiful feature of jury-trial, which, by the use thus proposed to be made of it, can scarcely fail to have been already presented to the reader's notice: that no less politic than generous arrangement, contrived by the genius of some now forgotten statesman, for the protection of *foreigners* against those adverse interests and antipathies, which are so unhappily apt to have place in the bosoms of *natives*.

A mind in which virtue in both her forms, moral and intellectual, shines thus bright, can hardly have been that of a lawyer. In matters of foreign politics — of political economy — in every branch of knowledge not immediately conducive to the advancement of their own personal or professional interests, the breasts of lawyers, especially in the "*highest situations*," are, even in these comparatively enlightened times, among the most noted tabernacles of *ignorance*: of ignorance, and of that *error* which, when accompanied with the degree of presumption so natural to such situations, is so much worse and more mischievous than simple ignorance.

When, for the benefit of foreigners, the *half-and-half* jury was introduced, it was not confined to the cases called *civil* cases: nor, among cases called *criminal*, to those of inferior importance: it covered the whole field of jury-trial.

As to special-jury trial, slid in by lawyers for the advancement of their own interests, and accordingly as it were by stealth, introduced by them, as we have seen, in pursuit of those two grand sinister objects, increase of *power* and *profit* to themselves, they neither dared nor cared to give it any such all-comprehensive range.

But, if needful for causes of property, and in the case of offences comparatively trivial, how much more needful must it not be in causes which, to the individuals at least whose station is on the defendant's side, are of the very highest importance — causes of life and death?

A principle which, in expectation of the superiority of intelligence expected from superiority of rank, gives up the reins without controul, to every *prejudice* and every *partiality*, with which it can happen to that intellectual superiority to be accompanied, is rotten at the core.

Argument against and for a half-and-half jury as a substitute to the existing special jury. — Dialogue between a Gentleman and a *Yeoman.*

Gentleman. — We are in *possession* of

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having a jury of our own sort at pleasure: that possession we claim to have preserved to us.

Yeoman. — More shame for you. On no principle, either of natural justice, or of the English constitution, can you defend this so recently usurped advantage.

As to us, so moderate is our claim, that, with that equality of *numbers*, which is all we ask for, the advantage, in any contest between you and us, would still be most decidedly on your side.

On *your* side is the superiority of intellectual force in all its shapes: — *knowledge*, *address*, habit of *taking the lead*.

On *your* side is the whole force of that *influence* which exerts itself on the *understanding*. On your side is every element of what is called *respectability*: *education*, *opulence*, *power*, *rank*, *connexion*. On no *other* occasion does this your superiority ever find you backward in the assertion of it: asserting it on every *other* occasion, and to every *other purpose* — on *this* occasion alone, to *this purpose* alone, you will not surely take upon you to deny it.

On your side is the whole force of that still more irresistible *influence*, which by *will* is exerted over *will*. To your class, our's looks up — looks up with hope — for *employment*, *custom*, *protection*, everything: your's to our's, for nothing. From your class, our's has everything to *fear*; your's from our's, nothing. Without any the slightest ground, or so much as a pretence, a man of your class has but to *bring an action* against one of our's — or if an action be not oppressive enough, to *file a bill* against him — his ruin follows of course. This is what we are indebted for, both of us, to *your* good friends, the lawyers. I say *yours*: for your's they *are* as against us; and your's they would be, if they were any body's.

But, to come to the point at once. Can you seriously *think*, and seriously take upon you to *say*, that, in case of difference, six of us can, in general, have as good a chance of persuading six of *you*, as six of you of persuading six of *us*?

What we not merely consent to, but propose and desire, is — that in ordinary cases — in all cases but those in which this proposed equality of numbers happens to be insisted on, there should be some *two* or *one* at least of you, for our guidance: — so far is this claim on our part from having for its principle any sentiment of hostility towards you — any sentiment inconsistent with cordiality, respect, and deference. As to confidence, unbounded confidence, it is more than human nature can ever, in the instance of any individual, much more in any large class of individuals, lay claim to, with any colour of reason or justice: and with political liberty, in any shape or degree whatsoever, it is utterly incompatible.

§ 5. *Arrangements continued* — 3. *Compensation-money to Jurymen.*

1. In the allowance to jurymen, distinguish two parts: one for *demurrage*, *viz.* at the place of trial; the other for *journeys*, *viz.* thither and back: *demurrage-money* the same to all: *journey-money* proportioned to the distance between the place of trial, and each jurymen's place of *residence*, and rated at so much a mile.

2. To save calculation, and prevent disputes, after taking, in each parish, a particular spot — say the site of the parish *church* — for the mark, let the distances of the several parishes from the place of trial be previously ascertained, once for all, and, in the form of a *table*, written or printed, kept hung up in the court; and also in the *office*, in which payment is made to the jurymen.

3. For *demurrage*, let the allowance to each juryman be so much a-day for the whole time of his necessary stay: and without regard to the *number of causes* in which it may have happened to him to serve: the amount being *pre-appointed*, *viz.* by a general regulation, having for its object the fixing it at whatever sum is regarded as being *at that time* and place necessary and sufficient for the maintenance of a juryman of the yeomen class: which fixation may consequently, in respect of the change in the value of money, require amendment from time to time.*

* Where the length either of journeys or of demurrage is anything considerable, paying a juryman *by the cause*, neither could *then* be, nor ever can be, anything better than a very unequal plan of payment. For since it would commonly, if not always, happen, that the *same juryman* would have to serve in *divers causes*, therefore when, in the instance of any such occasional judge, the number of causes in which he served happened to be *above* the calculation (*viz.* the calculated number, in the expectation of which the fixation of the sum in question took its rise) he might be to a considerable amount a *gainer*: when *below* that mark, to a considerable amount a *loser*. Here then was a sort of *lottery*: but in respect of the balance in point of comfort, all such lotteries are disadvantageous upon the whole.

Be this as it may, till at a comparatively late period, the circumstances of the times admitted of no other. It was not till the reign of Henry the 8th, *viz.* by statute 22 Hen. VIII. c. 5, that, for raising supplies for public purposes, any such rates as the *county* rates appear to have been in use. If so, the purse of one or other party was therefore the only fund on which the expense could before that time be imposed.

The year 1623 is the earliest point of time to which, on this subject, the information left to us extends. At *that* time, as already observed (Part I. Chap. IV. § 1, p. 76,) *eightpence* a head *per cause* was the allowance made to jurymen. And it was no greater in the country, at the *assizes*, where a juror might have 30 or 40 miles to travel,

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4. Let the allowance be neither more nor less to gentlemen than to yeomen jurymen.

For, if to the gentleman the expense of attendance will naturally be greater than to the yeoman, it is because in general the gentleman, in respect of his superior opulence, is better able to afford it.

True it is, that the rank of the *gentleman* is not exempt from *indigence:* understand, *casual* and *relative indigence.* But neither is that of the *yeoman:* and surely it is in the *worst-provided* class that the degree of indigence, and consequent suffering, is capable of being *most acute.**

than in the metropolis, at *nisi prius* or at *bar*, where he could not have more than a mile or two

In those days, eightpence was in *real* value as much, perhaps, as between three and four shillings now. But we know not at what earlier point of time this sum may have been fixed: nor consequently how much greater than at present the real value of it may *then* have been, and been designed to be.

Be this as it may, paying them by the *cause* must, at that time as at all times, have been, as already observed, an ineligible mode of payment: the amount of the allowance being to *each* person uncertain, and therefore, in point of *general* comfort, the arrangement a disadvantageous one upon the whole.

* If human reason had been in use to apply itself to the subject of *judicial procedure* in general, and to *jury-trial*, considered as a part of it in particular, the multitude of persons subjected to vexation in this shape would never have been, for *all* causes without distinction, fixed at so large a number as *twelve.* But this is among the subjects to which as yet human reason has *not* been in use to apply itself: among non-lawyers, scarce any person, in point of intellectual acquirements, competent, in any degree, to the task, having found and felt in his bosom a *particular* interest, strong enough to call forth the application of them to the subject: and as to lawyers, acting all along under the impulse of a professional interest opposite in almost every point to that of the public in general, the disposition to endure inconveniences in all shapes without remedy, not the disposition to be on the out-look for remedies, is the disposition which, on all causes, it has been their study to keep up, and inculcate.

(But to put an impossible supposition,) had any interests other than those of the all-powerful framers of the system, *viz.* the *judges*, with their associates and dependents, the professional and other official lawyers—had, in a word, the interests of the people, either in the character of *suitors*, or in the character of *jurymen*, presided over the details of it, the reduction would not have stopped there; but, having regard to the whole of this mass of vexation together, would have confined the production of it to the case in which, in the judgment of one or other of the parties interested, it would be of use: in a word, every cause, not of a penal nature, would in the first instance have been determined in the mode so strongly insisted on in another place: (See Scotch Reform, Letter I.) *viz.* in the way of *natural* procedure, in a single-seated judicatory, as now before a justice of the peace; *jury-trial* not being resorted to but in the way of *appeal.*

§ 6. *Arrangements continued*—4. *Fund, on which the Compensation-money shall be charged.*

1. As well in ordinary or *common jury* causes, (*viz.* where, by the supposition, no more than one or two gentlemen are upon the jury,) as in extraordinary or *special-jury* causes, where (also by the supposition) as many gentlemen as yeomen are upon the jury, let the expense of the above proposed compensation-money (say *jury-money*) be borne—not by the suitor on either side, but by the public at large:—*viz.* by being added to the *county-rates:*—unless, for this particular purpose alone, it were worth while to look out for a mode of assessment more equable.

The *interest* here provided for is that of the *suitors: viz.* on that side of the cause on which, whether in the right or the wrong, this part of the costs of suit would otherwise be imposed.†

2. In a special-jury cause, *i. e.* where, at the requisition of a party on either side, a half-and-half jury has been ordered, to prevent a disproportionate quantity of *vexation* in this shape from falling on the gentlemen's class, let an extra sum of money, at the rate of so much a-head for the *extra* number of jurors allowed (*viz.* four or *five*) be charged in the way of *costs*, on the party by whom the requisition was made: payable, however—*not* to the gentlemen jurymen, but to the *county* or other public fund, on which, as above, the ordinary expense of *jury-money* is proposed to be charged.

Interest provided for—that of *jurymen: viz.* gentlemen jurymen;—*object* aimed at—prevention of vexation—*viz.* of vexation which,

† From the aggregate number of lawsuits which receive their decision in the course of a given length of time, the aggregate body of *non-litigants*, in proportion as those decisions are, or are supposed to be, conformable to justice, derive *gratis* that security, which the aggregate body of *litigants* in those same suits do not enjoy but at the charge of the aggregate mass of vexation and expense attached to those several suits. (See Protest against Law Taxes.)

On this principle, so far as *bonâ fide* litigants alone are concerned—on this, were this the only principle consulted, there is not any part of the expense of litigation that ought not to be shifted off from the purses of litigants upon the public purse. But, if this transference were extended to the *whole*, litigation would be converted into a game: in which the expense of the stakes, being borne by the public, would thus be raised to an *infinite* quantity: raised, *viz.* for the amusement of litigants and profit of lawyers. Where, however, the expense assessed on the public is incapable of being increased, in so far as this is the case, the mischief in question cannot by the transference in question be increased. And in this case is the allowance *here proposed* to be made, as well as that part of the emoluments of judges which is in the shape of salary.

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in the shape of jury-service, might otherwise fall in an undue proportion on that class.

3. Immediately after the trial, upon the bringing in of the verdict, let the judge, instead of leaving the expense of the extra jury-money to lie, as above, upon the party by whom the *half-and-half* jury was required, have power either to impose it on any other party, or simply to take it off: in which latter case, the contribution destined, as above, for the public fund, will for this time not be received.

4. In the event of his exercising, in either way, the above proposed power, it ought to be under the notion, and naturally will be, that the cause is of the number of those which, on some *special ground* or other, will warrant the imposing on the *gentlemen's* class this addition to the quantity of vexation imposed upon them in this shape. This *special ground* will, as above, be either—1. *Extra difficulty*, 2. *Extra importance*, or 3. Demand for equality of numbers on the score of *apprehended partialities* — say more briefly, *apprehended partialities*. In the terms of his *order*, let the judge specify on which of these several grounds it has been founded.

5. For a further check upon the practice of making wanton demands on the time of the *gentlemen's* class, lest the simple charge of the *extra jury-money* (which at the present established rate will amount to no more than either four or five guineas) should not be sufficient, let the judge have moreover power to increase it at his discretion, up to a limited amount: suppose, for example, *treble* the amount of the simple charge.

6. The form of the judge's order may, in any of the above cases, be extremely simple: — as for example — 1. "This cause being by me deemed proper for the cognizance of a special jury, viz. on the score of" [then proceed to say *extra difficulty*, *extra importance*, or *apprehended partialities*, any *one* or any *two*, or all *three*, as the case may be] "let no extra jury-money be paid — or let extra jury-money be paid — not by ——— being the party by whom the requisition of the special jury was made, but by ———" [mentioning some other party or parties.] 2. "The requisition made of a special jury in this cause by ———" [here mention the name of the party, and his station in the cause] "being by me deemed groundless and wantonly made, instead of ——— being the simple amount of the extra jury-money, payable to and in exoneration of the county fund, let the sum paid by him be ———" [here mention the sum.]

7. Let fines for non-attendance be paid to and in exoneration of the fund on which the expense of jury-money is imposed.

For further explanation and justification of the above proposed arrangements, a few more words may perhaps not be ill bestowed.

As in the case of the *yeomen's* class, so in the case of the *gentlemen's* class, justice requires that, as in any *other* shape, so in the shape *in question*, a disproportionate quantity of *vexation* shall not be imposed: thence the ground for the preventive measures above proposed.

But, rather than any extra pecuniary allowance, in the name of *compensation-money*, should be given to individuals of the gentlemen's class, in contradistinction to, and at the expense of, those of the *yeomen's* class, better the money were thrown into the sea. By any such extra allowance, a pernicious principle — a principle of sordid and oppressive partiality — would be perpetuated: and public service in this shape would, instead of being a burthen indeed, but an honourable and useful, nor *that* a heavy burthen — imposed on all alike, would as at present be an object of rapacity and intrigue, sought for and obtained by such as are least deserving of it.

If, upon this plan, *vexation*, in the shape in question, should, in a proportion a little greater (and it could be but a little greater,) fall on the *gentlemen's* class than on the *yeomen's*, the overplus would, it is supposed, find for its justification the following grounds, none of which could have any application in the opposite case: —

1. In the character of suitors, to the lot of the gentlemen's class fall, in by far the larger proportion, as well causes that are attended with *extra difficulty*, as those which are attended with *extra importance*.

2. When, on the only remaining ground, *viz.* the ground of *apprehended partialities*, a *special* jury is allowed (*i. e.* a jury containing an extra proportion of *gentlemen*,) it is principally, if not solely, for the protection of the interests of this class, in case of any conflict which it may have with the interests, passions, or prejudices of the other. Receiving this *extra benefit*, they ought not to grudge a small portion of *extra burthen*.

3. Between the gentlemen's class and the yeomen's, the characteristic difference is — that, of the gentleman's time, a portion may be applied to this *public* purpose — to the purpose of judicature, without imposing upon him a loss of a *pecuniary* nature: whereas, in the case of the yeoman, a tax upon his *time* is, besides the tax upon his *time*, a tax upon his purse.

4. Service in this line being a source of useful information, and, like a scholastic exercise, a source of intellectual power, whether it be or be not pleasant to the particular individual, it is for the advantage of the public at large that each man should have his share of it: and if this be true, even in the instance of the yeomen's class, whose share in other branches of government is comparatively so small, it must be so in a more eminent degree in the instance of the gentlemen's class.

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whose share in other branches of government is comparatively so large.

By service, in the department of *justice* in the character of *juryman*, a man is, in some measure, trained and fitted for service in the field of government at large, in the character of *parliamentary elector*.

5. It may be of use that it should be distinctly seen on what ground stands the demand for an extra number of gentlemen jurymen on the score of extra difficulty or extra importance — in a word, on any other ground than that of apprehended partialities to the prejudice of that same class. For the purpose of guidance, if by no other than the only useful and proper sort of influence, *viz.* influence of understanding over understanding, *one* man of superior intellectual aptitude is as sufficient as any greater number could be: to this purpose, therefore, the only advantage gained by any addition to the number of gentlemen in the jury, is the additional *chance* it affords of obtaining the requisite degree of aptitude in this shape, in the person of some *one*.

In regard to the *fines for non-attendance*, the present system being inefficient, and almost completely nugatory, to give effect to them, and reconcile at the same time to each other the antagonizing ends of justice, would require some new arrangements, which, if intentions were but honest, might easily enough be carried into effect. On this head, a few general hints are as much as room can be found for in this place: —

1. The interest that individuals at large have in the *general fund* — say the *county fund* — not affording to any one of them a motive adequate to the purpose of engaging him to watch over its interest in this behalf with effect, a special interest must be given to some one person — for example, the person by whom the monies of this fund are received: a special interest, *viz.* in the form of a per centage upon the amount.

2. Into the pocket of this one person, the money ought to be made to find its way as it were of course: *viz.* without need of a *lawsuit* to be instituted by *him*, much less by any one else, for that purpose.

3. On non-appearance of any person summoned to appear for the purpose of jury service, let the money be, by a certain day thereafter, levied on him of course: unless at the day, appointed for appearance, in lieu of the person himself, there appear, under his signature, a paper exhibiting some one or more of a list of legitimate excuses, to be allowed and mentioned as such in the form of the *summons*: the facts of such excuses to be established by an affidavit, with or without co-attestators, as the case may be, according to *printed* forms, *pre-appointed* for the purpose, free of stamp-duty, and every other avoidable expense.

Were the arrangements left to *him*, a member of the *firm* of *Judge and Co.* would settle them on this occasion as he does on others. From this burthen as from others, applications made for relief in the case where, by accident, as above, the burthen has been rendered *undue*, would be more burthensome than the burthen itself: of an application thus made, the *burthen* would be *certain*, *success precarious*. Defaulters without excuse would remain unpunished: defaulters with good excuse — defaulters from necessity — would be oppressed. To each useful purpose the system would be inefficient: suffering to particular individuals, with pickings to Judge and Co. out of the same, would be the only fruit of it.

At the same time the whole business would be conducted with the most unimpeachable regularity. Precedent would have been pursued in everything that was done: and thus, as usual, all complaining mouths would be shut: unlearned mouths shut, learned shoulders saved harmless — saved from every particle of *burthen*, as in all other shapes, so in the shape of *blame*.

§ 7. *Arrangements continued* — 5. *Formation of the Qualified List* — *viz. in other counties, &c. as well as Middlesex.*

The basis of the jury system being the *qualified list*, the plan here brought to view might appear chargeable with oversight or negligence, if a topic so material were altogether passed by in silence. But the relevant facts being in so high a degree diversified, and for the most part so inextricably buried in obscurity, the nature of the case precludes every such attempt as that of proposing, in relation to this part of the subject, particularly in such a place as the present, anything like a *detailed*, *determinate*, and in a *geographical* sense all-comprehensive, system of arrangements.

By change, be it what it may — by innovation, on this as on every other part of the field of law — inconvenience, in some shape or other, in some degree or other, is sure to be produced. Unless, therefore, and until, inconvenience in some specific shape can be pointed out as resulting, or about to result, from the arrangements actually in use, this general consideration, loose as it is, will, in each division of the country, as well as at every period of time, operate, as a sufficient bar against any change that can be proposed. But no sooner is any such specific inconvenience pointed out, than the bar is provisionally removed: and then comes the operation of making a comparative estimate of the amount of inconvenience on *both* sides, in such sort, that when placed by the mind in two opposite scales as in a balance, a just conclusion may be formed, determining on which side the preponderance has place.

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But, in different territorial divisions, counties and privileged boroughs taken together, circumstances are, in this respect, so extremely different, that, independently of those changes, which, in some or all of them, are liable to be brought about by *time*, it can scarcely happen but that, if the same course be, in all of them, pursued without variation, inconvenience, and to no inconsiderable amount, would, upon inquiry, be found, in some instances, to have place.

Hence it is that, upon *a general* view of the subject, and antecedently to such *particular* inquiry as no power other than that of parliament is competent to make with effect, a general inquiry, of the nature above intimated, cannot with propriety be considered as superfluous.

For any such inquiry, the present, however, is not the proper place. The alarming political grievance, the utter destruction impending over the palladium of the English constitution, the liberty of the press — this was the consideration, but for which the present inquiry would never have been engaged in. Of this mischief the county of Middlesex has, by the causes already spoken of, been rendered almost the sole theatre. To the exclusion of these mischiefs, so far as depends upon the composition of the *qualified* list, an assemblage formed upon the principles upon which the composition of that list has hitherto been grounded, may, for anything that hath as yet presented itself to my view, be sufficient: I mean, of course, with the help of such ulterior arrangements as may be conformable to the principles herein already brought to view.

On what persons ought the *obligation* of serving on juries to be imposed? Answer — On every human being, but for some apt and special cause, either of *exclusion* or *exemption*. It is therefore by the indication of such *causes*, with the *reasons* on which their aptitude in that character respectively depends, that the proper abstract answer to that question will, in its several ramifications, be furnished. So far as concerns *exclusion*, these causes would be found to bear a considerable analogy to the causes of exclusion applicable to the function of *parliamentary elector*. In some instances, a cause that applies to the one function would be found exactly applicable to the other; — while in other instances, such coincidence will be seen not to have place. But in the instance of every circumstance that, in the character of a cause of exclusion, can be proposed with reference to *either* function, whether it be deemed applicable to *both* functions or to *one* only, and whichsoever be that one, considerable light would be seen to be thrown on the subject by the comparison thus proposed.

Thus much may be said of both cases: *viz.* that, consideration had of the great change in the value of money, as well as in other influencing circumstances in abundance, if the existing arrangements were proper at the times at which they were respectively made, it is impossible that, taken altogether, they should be equally so at present.

At the same time, from the mere existence of that comparative degree of impropriety, it follows not, that the advantages capable of being gained by the removal of the impropriety, would be an over-balance for the inconvenience that ought to be apprehended from a change.

A state of things by no means incapable of being realized, and which ought therefore to be kept in view, is — that the arrangements, having been in a less degree proper at the time when they were made, have by change of circumstances been rendered more proper than at first: — that, for example, the pecuniary part of the qualification, having originally been set at too high a rate, has, by the depreciation of money, been rendered more proper in the present less immature state of society, than it was in the more immature state of things which gave birth to it.

For any attempt to penetrate any further into the subject, it would be time enough if, for any practical purpose, the observations herein already submitted to the public should be found to have a claim to notice. Taking the county of *Middlesex*, in the first place, for the local field, it would *then* be time enough to extend the inquiry to the formation of the several *original qualified* lists for the several species of juries, relation being likewise had to the several species of judicatories in which they have to serve.

It would then also be time enough to extend and apply the whole of the inquiry to the several other *counties*, and judicial districts *included* in counties.

Should any such inquiry come to be instituted, the facts, collected and brought to light in relation to the county of *Middlesex* by the public spirit, the activity, and intelligence of Sir Richard Phillips *(see his above-mentioned work throughout)* will be found highly serviceable: for out of them may be formed a basis for inquiry, applicable to the several other cases just alluded to. As to all these matters, for the present at least, I can therefore do neither more nor better than to refer the reader to that eminently valuable and meritorious publication.*

* On the subject of what is called *unanimity*, my opinions have, in this very work, been already too plainly and strongly expressed to need repetition here. But the mention here made of so important a topic having been but *incidental*, I have not included it *in form* in the list of the changes *here* proposed. The subject being as yet far from exhausted, to do complete justice would require, as by its importance it would well warrant, a separate publication.

In any leading quarter, during the short time

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§ 8. *Arrangements continued* — 6. *Corruption by Individuals how prevented* — *No Party should foreknow his Jurymen.*

As well in special-jury causes, *viz.* with a *half-and-half* jury, as in common-jury causes, with one or two gentlemen jurymen, let matters be so ordered, that, to the parties on each side, it shall, to the latest moment, be impossible to know who the persons are that will serve as jurymen in the cause.

The *interest* thus provided for is that of the suitors, *viz.* in each cause that of him who is in the right: the object aimed at is — on the part of jurymen, *moral aptitude: viz.* in respect of exemption from such corruptive influence — such influence of will over will — as it may lie in the way of individuals in the character of suitors, to exercise on the decision of those their occasional judges.

On this occasion, before we come to speak of the *means* conducive to this end, observation will require to be taken of a sort of conflict which has place between *interest* and *interest*, and thence between *object* and *object:* between the interest of *suitors* (*viz.* such as are on the right side as above,) and the interest of *jurymen*. If that of jurymen were the interest that possessed the sole or the predominant claim to regard, *rotation* and that alone would be the principle employed: for, as will be seen, in so far as that principle is departed from, in so far, on the part of jurymen, *vexation* — the aggregate mass of vexation, produced by the obligation of serving in that character, must, *viz.* in respect of the number of them subjected to it, be increased.

But in that case, of the jurors who will have to serve in a given cause, if no supernumeraries are summoned, the whole number, or if, to make allowance for accidents, supernumeraries are summoned (but in no greater number than is necessary to make sufficient allowance for such accidents,) a large proportion of that number might come to be foreknown to the suitors in that same cause. Here, then, is a door open to corruption — to corruption in that shape — or at least in one of those shapes — in which the existence of it — the notorious and declared existence of it — gave birth to the first of the whole string of those statutes relative to juries, in which any mention is made of *special* juries.

If the principle of *rotation* be taken for the basis, two other principles ought therefore to be mixed with it: mixed with it, in the character of *correctives* and *preservatives: correctives*, viz. to the tendency of that principle, when employed crude and single; *preservatives*, viz. against the danger of such sinister influence. The one is — the principle of *disconnexion* as above explained; disconnexion as between gentlemen jurymen and yeomen jurymen, by means of *local distance*. The other is — the principle of *chance:* viz. as applied to the determination of the individuals that shall serve together on the occasion of each several cause.

But, when applied on the occasion in question to the purpose in question, the principle of *chance* requires an increase of number — of the number of persons subjected to this vexation: it requires, for the purpose of each several cause, the attendance of a number greater than the number of those who will have to *serve* on the occasion of that same cause: for, if *twelve* (the number of those that serve on each cause) were all that, under and in virtue of the summonses delivered to them by the sheriff, were capable of serving in that cause, the consequence is, that of each man, in so far as it were certain that he would *attend*, it would be certain that he would *serve:* and in this *certainty* there would be no room for *chance*. True it is, that of his attendance, even in that case, there could be no *absolute* certainty: for, besides the accidents, such as death and sickness, to which all mankind are subject, and over which the will of man has no controul, if, relation being made to the state of the law on one hand, and the state of his own affairs and inclinations on the other, it were to this or that man more agreeable to stay away in despite of the law, than attend in obedience to the law, he would do — as jurymen, or at least as gentlemen jurymen, are at present suffered to do by gentlemen judges — he would stay away accordingly. But, though, to any *good* purpose, certainty would not in that case be attainable, yet to a *bad* purpose, viz. to the purpose of corruption, in the way in question, a *probability* but too little short of certainty *would* be attainable: for the corrupter, foreknowing — knowing as soon as the list of the persons summoned, or about to be summoned, for service in the cause in question, were known to him — the corrupter, knowing of twelve persons, in the power of every one of whom it would be, bating accidents, to serve, would at the same time know of so many persons, of the attendance of any one or more of whom he would, in the event of his succeeding in his plan of corruption in their instance, be sufficiently assured.

In the case of common juries, the statute so often spoken of (3 Geo. II. c. 25) has, in § 8, with or without intending it, afforded for

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that I can have yet to live, should a disposition ever manifest itself to consider the dictates of *veracity* and *justice* as fitter guides for the conduct of English judicature than blind and unreflecting prejudice, it will then be soon enough to bestow upon the subject a quantity of *time* and *space* proportioned to its importance. It might then be seen, perhaps, nearly to what *age*, and not improbably to what *parents*, the monster owed its birth.

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this salutary application of the principle of *chance* a sufficient basis: 72 being the greatest number, 48 the least number, which (regard being apparently had to the difference between county and county in respect to *local extent*) it allows to be summoned to appear on each occasion—for example, at each *assize*—for the trial of whatever number of causes may happen to be ready for trial at that assize. But not only of this least allowed number, 48, but of a considerably less number, it is evident, that, with the help of the principle of chance, it might be made use of in such manner as to render corruption—previous intercourse, and thence corruption—on the part of individuals, practically speaking, impossible. For the first cause that comes on for trial, immediately before the trial, let the names of all such as are present be put into a dark box, shaken together, and so drawn out. If of these twelve it were determined, that after this first cause they required respite (though for the judge who has the guidance of them there is no respite,) these might on the second cause be all of them set aside, and for that second cause the lottery be confined to the remainder: and, the first twelve being after their respite replaced in the lottery, so on through any number of causes.

But if, in the instance of any one cause it be in the power of any one person of himself to *determine*, or by any other means to *know of*, a set of persons, in the power of each or even any one of whom it shall be in the character of juryman to serve, in the power of that one person it is, whether by neglect or by design, to *introduce* an intended corrupter to so many persons in whose power it will be, if corrupted, to secure to him the verdict he desires: and, the greater the number of the persons to whom it happens to be in possession of this knowledge, the greater the number of such possible *introductors*, and by that means the greater the probability that such corruption will take place.

Let, for instance, the rule be such, that it it is by a certain person—for example, *the sheriff* (that is to say, the *attorney* by whom, in the character of *under-sheriff*, the business is done)—that it is by this person that the list of the persons, who are to be summoned to serve as jurors on the occasion in question—for example on the *assize* in question—is to be determined;—that at the assize in question, the number of these is to be 48;—and that in the first cause that stands on the roll, the 12 first of those that appear are to serve. In this state of things, it is evident, that if to this attorney it should happen to find his convenience, either in corrupting the requisite number of jurymen himself, (which might be attended with some danger) or in letting in another corrupter upon them (which might be done without any danger,) the *regular* practice will find itself altogether well adapted to the purpose.

In this state of things, thus for illustration sake supposed, we see, in aid of the practice of corruption, two auxiliary principles—*viz. choice* and *foreknowledge*, confederated. But even without the aid of *choice*, *foreknowledge* may very well be sufficient for the purpose. Suppose it settled, that in the *gross* or *total qualified list*, the names shall be entered in the order of the *alphabet:* moreover, supposing the whole number in a given county 480, and 48 the number to serve on each assize;—that for the first assize, the 48 whose names stand first in the alphabetical list thus composed shall be summoned to attend; for the next assize, the next 48; and so on. On this plan, if pursued without deviation, it will *not* be in the power of the sheriff (that is, of the *attorney* his *deputy*) to *choose* a *set* of eventual jurymen for the purpose of their being corrupted; but, what is worse, it *will* be in the power of every litigant to whom the order of things in question is known, to find his way to those on whom he proposes to himself to make the experiment—to find his way to them *of himself*, and without the need of being beholden for introduction to an under-sheriff or anybody else.

Thus much as to juries *in general*—thus much as to *common* juries: thus much as to what, in that case, is *capable* of having place. As to what in that case *actually has* place, it is what it might take up too much room to state, and what at this moment the means of inquiring into are not within my reach.

As to the case of *special* juries, what actually has place lies in a narrower compass, and at the same time within reach. In this case, everything that, for the furtherance of corruption, by possibility *could* have been done, *has* been done: whether it be *constant* corruption, administered, and with *certainty of success*, by and for the benefit of persons in "*high situations*" as such, and without either *risk* or *trouble* on their part, as above—or *occasional* and casual corruption, to be on this or that occasion administered, in his *private* and *separate* account, by this or that particular person, in or out of *high situation*, to whom it may happen to stand in need of such assistance. In the first place, *choice* (as we have so often had occasion to observe) is put into their hands; *viz.* by the power of "*nomination*" vested in the hands of the master packer for that purpose. In the next place, among the comparatively small number 24, in the instance of which the *choice* is *made*, and *attendance* accordingly *commanded*, "*foreknowledge*" is rendered, to the purpose in question, "*absolute:*" for out of these 24, who, as per list, are *summoned*, of those that *appear*, the 12 whose names stand *first* upon that same list, are the 12 that serve.

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For the furtherance of corruption, the utmost that *could* have been done, having thus been *actually* done, to what cause, to what *psychological* cause, having its seat in the breasts of learned and reverend lords and gentlemen, shall the result be ascribed? To *design?* It would be of a piece with all their other designs, and all their other doings. To *imbecility?* On the part of no other set of men would imbecility be to be found, weak and palpable enough to match with it. For note once more, that it was amid the cry of corruption — actually experienced and acknowledged corruption, that this state of things, so exquisitely adapted to the purpose of that same corruption, was in and by this very statute (3 Geo. II. c. 25) part *confirmed*, part *organized*.

§ 9. *Unanimity increases the Aid afforded to Corruption by Foreknowledge.*

By the principle of forced *unanimity*, so long as that abomination is suffered to continue, an enormous degree of facility, as already observed, is given to the corruption of jurors: since by any *one* of the *twelve*, so that one be but sufficiently remunerated for the quantity of endurance necessary, the suffrages of the remaining *eleven* may be forced. And though, in any given instance, as matters stand, it should not be capable of being foreknown to a certainty that this or that one individual will on the particular trial in question be upon the *serving list* — foreknown, viz. time enough for administering to him the matter of corruption with effect, yet by gaining divers individuals, each of them *likely* to stand upon the *serving list*, the probability of success may in any degree be increased.

Were that flagitious principle rooted out, and the principle which gives the power to a majority seated in its place — were this done, even a slight admixture of *chance* (if it be too much to say the rational and honest principle of itself, and without the help of chance) would suffice to render corruption in this shape morally impossible. If no number less than a majority, viz. less than seven out of twelve, were sufficient to command a verdict palpably unjust upon the face of it, no such verdict could be commanded without a completely successful application of the matter of corruption to that large number. But, taking the state of morality among the people upon the worst footing imaginable, the chance of finding, or creating on the sudden, so much depravity on the part of so large a number, and *that* out of a *limited* greater number, cannot but be extremely small: and, ere he could give himself that small chance, the corrupter would be under the necessity of putting it into the power of each of the seven to ruin him, in character at least, by covering him with infamy. Such would be his difficulty, even supposing the *twelve* who are to *serve* on the trial — supposing them, *all* of them, in their turn, at and during the quantity of time that lies open to the intrigue — all of them during all that time to a certainty foreknown. And suppose such absolute foreknowledge unattainable — suppose, for example, *four-and-twenty*, the number of the *gross list*, of any of whom the *twelve* upon the *serving list* may happen to be composed, it is easy to see that, to this our supposed corrupter, the improbability of success, and at the same time the magnitude of the danger, must, in this case, receive a prodigious increase: for, in this case, to give him the same assurance of success as in the former case, no smaller than *nineteen* is the number that would be necessary to be thus corrupted.

But upon the principle of sham *unanimity* — upon this principle, which gives the command of the verdict to any one — not only, if all *twelve* were foreknown, might the corrupter, by the corruption of a single juryman, give himself a certainty of success, but if no other knowledge were obtained, more determinate than that of the *four-and-twenty* out of which the *twelve* would be taken, the same success, in the preparatory operation of corruption, would still give him an *even* chance of succeeding in the ultimate object of the corruption, viz. the commanding of an unjust verdict: and, by every additional juryman whom he could contrive to gain, this even chance would receive a proportionable augmentation, until by the rising of the number of the corrupted to *thirteen*, absolute certainty would even in this case be produced.

Thus stands the matter upon the supposition of a *gross list* equal in number to *twice* the *serving list:* augment the relative number of the *gross list*, the difficulty of corruption will, it is evident, be in both cases increased; and in each case by an amount that might be ascertained, but is not worth ascertaining for the present purpose.

One thing will be evident, *viz.* that, on the principle which gives the command of the verdict to a *majority* out of twelve, under the *most* favourable circumstances in respect of the number of the *gross list*, corruption could never obtain a chance nearly equal to what, on the principle which gives the command of the verdict to *any one* corrupted juryman, it possesses under the circumstances *least* favourable in that respect. *Seventy-two* is the greatest number that can in any county be returned and appear for the trial of all the causes that can at one and the same assize present themselves:* and even under so great a disadvantage, if the power be in a single juryman, the corruption, though it were but of a single man of the seventy-two, gives the

* Viz. by 3 Geo. II. c. 25, § 8.

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corrupter a chance of success, *viz.* as *one* to *six*. Whereas, if the power be in the majority, though the number returned and appearing be no greater than the twelve who are necessary to serve, insomuch that all who are to serve are foreknown, the corrupter may have gained *six*, or at least *five*, without having as yet given himself any chance at all.*

§ 10. *Arrangements respecting Form: viz. the Form of the proposed New Law.*

For giving expression to the operations, which, under this head, require, in my view of the matter, to be performed, a very few words will suffice. Presenting themselves as requisite in relation to *this* part of the field of law, the mention of these operations could not, on this occasion, be omitted. But, in relation to *this* part of the field, the demand for these operations cannot be more urgent, nor the propriety of them more indisputable, than they are in relation to every *other* part of the same as yet scarce cultivated waste.

1. *Consolidate* into one act all laws relative to juries.

2. *Repeal* in the lump the whole of the existing chaos.

3. Place the whole of the rule of action on the footing of *statute* law. Of the practice of the several judicatories, whatsoever is approved of, adopt and give *expression* to: whatsoever is not approved of, abrogate in the lump.

4. Except in virtue of such special powers, as shall, in the tenor of the law, be thought fit to be given for the purpose, forbid all alterations and regulations that might otherwise be made in or respecting the field of *practice* in question, in and by the authority of the respective judicatories.

* Fifteen hundred pounds I have heard mentioned as being, in one instance that happened not very long ago, the sum at the expense of which a verdict was obtained. According to the report, it was a case of life and death: the cause being an indictment for murder, and the money given by the defendant. The fact was mentioned to me as one that had become in a considerable degree notorious; but, having no means of forming any opinion concerning the truth of it, I forbear mentioning any further particulars, lest, the story being false, suspicion should by this means come to attach itself to this or that individual, in whose instance it would be injurious.

Under the principle of forced, or rather *sham* unanimity, it is easy to see what prodigious facility is given to a plan of corruption of this sort. "Do what you will," says the first corrupted juryman to the rest, "I am determined to stand you out. Stand you out till you are almost starved, you will get nothing, and as you will find it necessary to yield at last, you will not succeed: for this generous man shall and will be acquitted in spite of your teeth. On the other hand, join with me in a verdict of acquittal at once, you shall have £50 a-piece, and no more injustice will be done, than would be done if you got nothing; so that this £50 will be yours with a clear conscience."

Supposing then this story to have any truth in it, I see not how, even with the force of torture thus vested in his hands by the principle of unanimity, the murderer, by the assistance of his learned friend or friends, could have effected his liberation without some degree of foreknowledge. Of some one fit person at least it must have been foreknown to him that he would have to serve upon this jury: foreknown of some one person, that after being himself corrupted, he might be in a condition, as well as in a situation to operate, in the character of corrupter upon his colleagues.

CHAPTER II.

STATE OF JURY PACKAGE IN SCOTLAND.

ON this head much stands expressed in a few words.

Extract from an anonymous pamphlet published on the occasion of the Scotch judiciary reform, under the title of *Reflections on the Administration of Civil Justice in Scotland*, &c.: Edinburgh, for Blackwood; London, for Longman & Co. 1806—page 88, note:—

"The mode of appointing juries in criminal cases is most improper. The sheriff may return forty-five men chosen by him at pleasure; the judge may select any fifteen of them to compose the jury; peremptory challenges are unknown. Is it not obvious that these two officers have the fate of a prisoner often in their hands?—in other words, that they can return what is termed in England *a packed jury?* Nothing should be left in criminal cases to the discretion of persons over whom the crown is always likely to have influence; and therefore it is much to be wished that a clause should be introduced in the bill, which is to be founded on the *resolutions*, in order to regulate the appointment of juries in criminal cases."*

If, in the statement thus made by an anonymous, though not altogether an unknown hand, there be a syllable of truth—and by known, and well-informed and trust-worthy informants, I am assured that it is correctly true—the packing system has in that kingdom been carried to a pitch of perfection equal in efficiency at least, if not in dexterity, to that which it has attained in England, and this not only where personal liberty alone, but where life and everything else, is at stake. If, in the whole population of that kingdom, electors and elected, there be a human being fit for anything better than to serve as a tool in the chest belonging to *Lord Melville*, or a commissioner in the committee of reform, headed and characterized by that name, behold an occasion for him to show himself.

* By 6 Geo. IV. c. 22 (20th May 1825,) the persons qualified as jurymen are summoned by the sheriff in rotation, and from them the individuals to serve on each trial are selected by ballot.—*Ed.*

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CHAPTER III.

HUMBLE PROPOSAL FOR RESTORING THE UTHORITY OF PARLIAMENT.

§ 1. *Unless the Authority of Parliament be vindicated, Package cannot be abolished.*

I COME now to the second of the political disorders here in question, *viz.* the contempt — the habitual and undisguised contempt — manifested by judges, and other subordinate functionaries, as towards the authority of parliament: or rather (for in *this* consists the malignity of the disorder) the connivance — the habitual and unvaried connivance — by which this contempt has been encouraged and confirmed.

On this head, a conception that will naturally present itself to everybody, and at the first glance, is — that the present is of the number of those occasions in which the difficulty consists — not so much in determining what it is that is proper to be done, as in engaging men to do what is proper to be done, whatsoever it may be.

To the justness of this remark I can find nothing to oppose: accordingly, of the two following sections, the business of the first is — to do what can be done by so weak an instrument of communication as the present, towards holding up to view the flagrancy of the disease: of the other, to present to view, and in a specific shape, what seems to be the proper remedy, penetrated all the while with the clearest and acutest sense of the minuteness of the chance in favour of its being applied.

This, bitter as it is, is a cup which cannot be put by. *Package*, it is true, constitutes that particular abuse which is the object — the only *direct* object — of the present work. But so intimate is the connexion between *this* disorder, and that which consists in the habitual contempt of parliament, that while this radical weakness remains uncured, any remedy that can be applied to the *derivative* malady will either be from the very first inoperative, or, at the very best, will in a short time cease to operate. If the authority of parliament had not been set at nought by judges, the package of juries could not have been established, much less, as we have seen it, openly defended: and while parliament continues, as it has done, to suffer its authority to be thus set at nought, in vain would it endeavour to put an end to this package: juries will, as at present, continue to be packed. To apply to this abuse the only possible remedy — I mean, the only possible *direct* and *special* remedy — it would be necessary that parliament should make a fresh law: but if, when the fresh law has been made, judges continue determined to deal by it as judges have done hitherto by the existing ones, *viz.* to disobey it — and parliament to do as parliament has done hitherto, *viz.* to sit still, and, without a thought of giving effect to its authority, see itself disobeyed, the trouble of making fresh laws, under the notion of applying a remedy to the other abuse, may as well be spared.

§ 2. *Contempt put upon the Bill of Rights, by the Lord Chief Baron's Package.*

As to the statutes, which bear in detail upon the subject of *juries*, and even in respect of the clauses in question thought to bear upon *special* as well as *common* juries, these, it is true, were, on the occasion in question, by the learned judge more particularly in question, *viz.* the Lord Chief Baron, violated in *intention* only, and not in *effect*: special juries having, by the fraud of the learned penman, been exempted, as we have seen,* from those provisions against corruption, the demand for which was so much more urgent in that case than in the instance of common juries.

But though, in the manner that has been seen, the contempt entertained by this pre-eminently learned person (not to speak at present of any other pre-eminently learned persons) as towards the authority of parliament, failed *by accident* and by misconception to fall upon these statutes at which it was principally aimed, it fell, as we shall see, *without accident*, upon another statute, I mean the statute commonly called the *Bill of Rights*.†

On looking into this much-vaunted law, and in particular into those parts of it which bear upon the subject here in question, the weaknesses betrayed in it are seen to be such as cannot be thought of without regret; the imbecility, if not the treachery, of the learned penman, in whom the unlearned found themselves, as usual, under the necessity of reposing their confidence, being, on the face of it, but too distinctly visible: propositions, of the cast termed by logicians *identical*, fit only for the mouths and pens of drivellers: propositions which, neither conveying instruction nor imposing obligation, leave everything exactly as they find it: propositions declaring that what is *right ought* to be done, and what is *wrong* ought *not* to be done, and so forth.

But this weakness, though to a lover of the English constitution it cannot but be matter of regret, will not, to the pre-eminently learned person in question, afford any thing like matter of excuse. For to this so much vaunted law — to this *law*, as to everything else that bears the name of *law*, some meaning must be found: and to this law, *viz.* in respect of that clause in it which is here in question, no sooner will any meaning be found, than what will also be found is — that by this pre-eminently learned person, it has been violated.

* Part II. Ch. V. † 1 W. & M. sess. 2, c. 2.

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In the section in question (§ 2,) two parts may be distinguished — the historical and the legislative. In the historical, the principal abuses of the then late reign are related under twelve heads; in the legislative, under an equal number of heads, the repetition of these same abuses is, to wit, by a *declaration* made of their illegality, reprobated.

In the *historical* part, of the only article which touches upon jury-trial, being the article which is numbered 9, the words are as follows:—"9. And whereas of late years *partial, corrupt, and unqualified persons have been returned and served on juries in trials* (and particularly divers jurors in trials for high treason, which were not freeholders.")

In the *legislative* part, in the only article which touches upon this same subject, being the article which is numbered 11, the words are as follows:—"11. *That jurors* ought *to be* duly *impanelled and returned* (and jurors which pass upon men in trials for high treason ought to be freeholders.")

In each of these two articles, there is a clause which does *not* bear upon the present subject; *viz.* that which speaks of *high treason* and *freeholdership*. Of the clause which *does* bear upon this subject, it must once more be confessed, that, if it be not sad treachery, it is sad dotage, — "that jurors *ought* to be *duly* impanelled and returned;" *viz.* that what in this case ought to be done, ought to be done.

In relation to the subject here in question, the law having thus in itself no meaning, to find a meaning for it, we are sent to history — to the history of the times. Consulting history, a fact that we find in every book of history that touches upon those times, is — that in the two reigns then last preceding, juries used to be *packed;* that is, that, instead of being left to a mode of selection, which, with reference to the crown, its dependent judges, and its other instruments, would have come under the name of *accident* or *chance*, the persons serving as jurors were determined by *choice;* viz. by the choice made of them by these same instruments. The choice having for its notorious object the causing unjust verdicts to be delivered, persons, who either of themselves were "*partial*," or were made so by being made "*corrupt*," were taken for the objects of such choice, and, if they were not *found* so, were *made* so, by that choice.

That in the exact *bulk* to which it has been swollen, and in the exact *shape* into which it has been, by our pre-eminently learned artist, moulded, the abuse relative to juries was not in the contemplation of the framers of those clauses, must I think be confessed: perfection, such as this which we have seen realized by *Lord Chief Baron Macdonald*, outstripped — not only the observations made by the *Maynards*, the *Somerses*, the *Hawleses*, the *Pollexfens* — but the most sanguine hopes of the *Scroggses* and the *Jefferieses* with their *Et cæteras* of those times.

But what, on the other side, cannot, it is supposed, be very easily denied, is — that, in the *major* abuse of *these* our maturer times, the *minor* abuse of those immature times is included. The abuse of those days was, that after hard labour bestowed upon the matter on each separate occasion, persons, who were *found* or *rendered* "corrupt"—or in some other way "partial," were on great occasions now and then "*returned*," and made to "*serve on juries in trials.*" The abuse of *these* days is — that, under the arrangements made — made and in despite of remonstrance *persevered* in — persevered in either for that purpose or for none at all, persons are on all occasions, great and small, caused to be "*returned*," and to "*serve*,"— persons such as, by the *permanency* with which they are invested, and the habitual, but ever withholdable *bribes*, with which they are fed, cannot but have been rendered "*corrupt*"—corrupt to a degree of corruption, of which, as surely as by any "*partiality*" it could be made to be, injustice is, upon every desired occasion, the habitual consequence.

In vain would his Lordship say — Those whom I have caused to be "*impanelled and returned*," — as you would say, *not* "*duly impanelled and returned*,"—are not *jurors:* they are in effect *commissioners*, and members of a *standing* board of my own framing — persons whom, into the box which ought to have none in it but jurors, I have so managed as to introduce, under the *name* of jurors. Those whom *you* take for jurors — those whom I have thus "*impanelled and returned*" under the name of jurors, are *not* jurors; and therefore, in causing them to be "*impanelled and returned*," even though it should not be *duly impanelled and returned*, I have not offended against the Bill of Rights.

"My intention was not to 'maim and disfigure' the man—my intention was to kill him: and therefore, if you punish me as for maiming and disfiguring him, *you punish me without law.*" Such was the plea of a very ingenious as well as learned person, a Mr. Coke, who, on the act of 22 and 23 Car. I. c. 1, was indicted for the maiming and disfiguring of a Mr. Crisp—"What I am accused of intending to do is the committing the lesser crime: what I really *intended to do* is only a greater crime, in which the other is comprised." This plea did not avail Mr. Coke, and as little, if there be anything like justice in the country, will it avail the Right Honourable Sir Archibald Macdonald.

But (says somebody) as one *swallow* suffices not to make *summer*, so one *act* suffices not to make a *habit*. What, in this particular instance, was done, may not perhaps have been altogether justifiable; but, if for the express and sole purpose of correcting this error, so

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it should come to pass that a fresh law were made, can you, by this one instance of irregularity, hold yourself warranted in apprehending that a law so made would not be obeyed?

I answer, *Yes:* even by this *one* instance, the disobedience being so *deliberately* and *determinately*, and after such *warning* and *remonstrance*, and upon such principles as have been *avowed*, persevered in. But, of the existence of the habit, and my expectation of the eventual continuance of it, it is on this *one* act *alone* that I ground myself; and, to render it manifest, and beyond all possibility of dispute, that the contempt put upon parliament is *determined*, and rooted in a sort of *principle*, I proceed to bring to view, out of a countless multitude that might have been produced, another instance or two, such as either the matter of the present inquiry, or chance recollection, has happened to throw in my way.

§ 3. *Recent Contempt of Howard's Act by the Detention of Acquitted Prisoners.*

To enumerate all the instances in which the symptoms of the disorder in question have exemplified themselves, would require a volume. Of the example which here follows, the particular use is — to show the *obstinacy* of the disease: and it is only by casual symptoms, brought to light by rare occurrences, such as accident may not either bring to light or so much as give birth to, twice in half a century, that this quality in the disease can have been made manifest. In the *books*, the *contempt* — the simple contempt — may indeed be seen breaking out continually; — but it is only by *extra-judicial* conversations or correspondences, that the obstinacy of it could have been displayed in its genuine colours.

By *obstinacy* on *one* part, *energy* on some other part, and acting in an opposite direction, is implied. But in any court of judicature, on the occasion of a *cause*, no such energy ever has been known to be, or with any colour of reason could be expected to be, displayed. On the occasion of a *cause*, the only sort of person by whom any such quality as *energy* can in any direction be displayed, is an advocate. But, from the advocate, whose contention is *before* and *under* the judge, not *with* and *against* the judge, it belongs not to the station of the judge to experience any thing like *adverse* energy. One common interest — one and the same sinister interest — links them together in indissoluble bands. Accommodation to indolence, gratification to vengeance, unmerited reputation, sinister emolument, lawless power, — whatsoever of all these good things the judge holds in *possession*, the advocate beholds in *expectancy*. The weakness of the legislature constitutes the lawless power of the judge: and the *present* power of the judge is the *future* power of the advocate. With the legislator, his supposed superior, the judge never comes in contact: from the legislator he knows not what it is to experience resistance. The legislator makes laws: and the judge, according as it happens to them to suit or thwart his views, gives effect or inefficiency to them, as he pleases. In parliament, be his rebellion ever so flagrant, he beholds neither *inspector* nor *denunciator*, much less an *avenger:* two sorts of men alone does *he* behold there — *admirers* — ignorant and awe-struck admirers — or *accomplices* or *abettors*.

Thus it is that the king — I mean the king in parliament — being sunk into a *King-Log*, not only the great bull-frogs, but the meanest tadpole, views his humiliation with complacency, and beholds in it a source — an inexhaustible source — of power, impunity, and triumph for himself.

Evidence of *obstinacy* in one quarter requires, as above, and supposes, *energy*, adverse energy, in another: on the particular occasion here in question, thus it is that, government being in this country in the state above described, the energy necessary on one side, and consequently all manifestation of *obstinacy* on the other, might have been wanting for any number of additional ages, had it not been for the till-now-unexampled union of public spirit and intrepidity — well-directed public spirit and persevering intrepidity — in the person of Sir Richard Phillips.

Materials I have none, over and above those which have already been laid before the public by *himself:* but in *his* work they stand mixed with other matter in abundance: and, for displaying their importance with relation to the design of the present work, observations have been found requisite, such as could not have come, with equal propriety, from any person, by whose testimony the facts themselves were furnished.

In regard to the degree of *credit* due to it, one very short observation may suffice. A twelvemonth and more has elapsed, since his statements on this head have been made public, and in all this time not a syllable of contradiction has appeared from any one of the official persons whose conduct and language is here in question. One of two things: either no contradiction *could* be given — or, in the style of the pre-eminently learned judge, to give it was not thought "*worth while.*"

Judges publicly charged, and by a functionary, himself in "*high*," however subordinate "*situation*" — charged with disobedience — wilful disobedience, to parliament: and in *their* estimation so trivial the imputation, and the opinion of its truth so unproductive of all cause of uneasiness or apprehension to themselves, that whether it prevail or not is to

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them and their *feelings* matter of indifference. This being the state of judicature, in what a state is government!

The case that gave occasion to this display is as follows:—

By the statute 14 Geo. III. c. 20, § 1, as copied by Sir Richard Phillips, it is enacted, "That every prisoner charged with any crime, or as an accessary thereto, against whom no bill of indictment shall be found by the grand jury, shall be IMMEDIATELY set at large, in open court, without the payment of any fee," &c.*

Of an enactment thus clear and explicit, the habitual violation is, in a memorial addressed to the Recorder of London — couched in the most respectful terms, dated the 3d of November 1807, and presented in the names and with the concurrence of both the sheriffs — presented to the notice of that learned judge on the 3d of November 1807. For *eleven* days no answer. On the 14th of the month (no answer yet received) follows, in the form of a note, an address from Mr. Sheriff Phillips *alone*, to the same learned gentleman, for the declared purpose, indeed, of "*reminding him*" of the above paper, but again in the most cordial as well as uniformly respectful terms.

The season of delay was now past: now comes the season of *promptitude*, at least, if not of *precipitation*.

A few hours brought to Sir Richard an answer, from which, what belongs indispensably to the present purpose (not to touch upon matter foreign to it,) the following is an extract:—

"As the commission of gaol delivery at the Old Bailey is constituted of the highest, and of all the law authorities in the kingdom, the twelve judges of England, the whole magistracy of the city, besides other great and respectable names therein, Mr. Phillips, upon consideration, will surely see how indecorous it would be in the Recorder of London to discuss and argue of the power, authority, and practice of that court, with one of the sheriffs, who, however privately esteemed and regarded by the Recorder, is, with respect to that commission, but an officer and minister of the court."

Business, at least where the *public* has an interest in it, does not, we shall see, linger with Sir Richard Phillips. Not after an interval of *eleven* days, but on that *same* day, in reply goes another note from him to the same learned judge, always in the same style of unvarying respect, but expressing "*his earnest hope*" that the necessary measures would be taken for paying obedience to the law; and stating, amongst other matters, "that he understood, in a late conversation with Lord Ellenborough on this very subject, that points of practice in the Old Bailey court rest chiefly, if not entirely, with the *Recorder*, as the law-officer of the corporation."

Thus, had it depended upon Mr. Recorder, would have ended the whole business. Fortunately, "within a few weeks after," the sheriff, as he tells us, "had an opportunity of pressing the subject again on the notice of the Recorder, when (continues he) he peremptorily told me, that *he never would* consent to the alteration in the practice of the court which I proposed, and as long as he lived, it should continue as it is."

Thus far Sir Richard Phillips. As to Mr. Recorder of London, for my own part, if with any propriety I can be said to have any personal acquaintance at all with that learned judge, it is of no other sort than what, as towards him, would tend to cherish in my mind those sentiments of respect and regard which were so uniformly manifested towards him by Sir Richard Phillips.

But, though a very obscure and insignificant person, I have the honour to be a British *subject*. I say *subject*: for on *that* ground, rather than on so *technical* and *narrow* an one as that of *freeholdership*, do I choose to rest my claim. I am a British *subject*; and, in that character, I feel as strong an interest in the *preservation* of the English constitution, as any one can feel in the *preservation*, or even in the *destruction* of it. And, in consideration of this interest it is, that it seems proper for me to declare — that, although instead of being that great person to whom, by the description of *points of practice*, this part of the liberties of Englishmen is, it seems, "*bargained, assigned, transferred*, and *set over*," by the *twelve judges*, he were my brother, my opinion concerning him would still be this, *viz.* that if it really *were* the case, that the continuance of the practice depended upon his life, the last day of that life would to his country be a most happy one.

A conspiracy of the *twelve judges*, with the Recorder of London *at their head* (for such it seems is the new order of things) — a conspiracy of the twelve judges with their ringleader the recorder, for mending the constitution of the country, by resisting, overruling, and treating with *avowed* contempt, the authority of parliament! Such is the state of things brought to view by this evidence. Such is the state of things which I would wish to recommend to the consideration, the serious consideration, of all such British subjects, if any such there be, in whose eyes the preservation of the constitution of the country is of more value than any share which, in the character of lawyers, or confederates with lawyers, it may happen to them to look for in the plunder of it.

"Mr. Phillips, upon consideration, will surely see how *indecorous* it would be in the

* Phillips, pp. 62 to 68.

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Recorder of London to discuss and argue of the power, authority, and practice of that court with one of the sheriffs, who is but an officer and minister of the court." No: if in any such *argument* Mr. Phillips could have seen anything *indecorous*, *his* view of the matter would, I will confess, have been very different from mine.

Indecorum in arguing, in relation to the point in question, the practice of the court? No: but something a great deal worse than *indecorum* in the determination—the obstinate and rebellious determination — to continue in such practice.

The House of Commons — yes, the House of Commons — *there* is the place, at which the discussion on this question should *now* be carried on. As to *argument*, of *argument*, of further *discourse*, — unless what as above is stated to have been his language, be not only in tenor but in purport denied to have been so — of further discourse, in *any* shape, on the part of the learned gentleman, there is no need: — *hearing* is for him the only ulterior function needful: *hearing*, his *function*—*genuflection*, his proper *posture* for the performance of it.

The *inhumanity* of the practice, its rank and barefaced *injustice*, the *oppression* thus heaped—heaped upon injured and established *innocence* — the contrast it makes with their principle of *nullification* — the instrument manufactured by their partnership for dealing out impunity at their own pleasure, and their own price — for dealing it out, not to merely *possible* only, but to convicted guilt* — all these are subjects which must for the present be discarded, as being foreign to the design of the present work, as well as of the present chapter. The subject which alone belongs to the present purpose is the subversion of constitutional order — the contempt — the wilful, the deliberate, the confederated contempt — of that supreme power, the supremacy of which is in words acknowledged, and in grimace bowed down to, even by themselves. Alas! by what terms can such enormity be expressed? The very language sinks under it! †

* See Scotch Reform, Letter I.

† Incomprehensible as this pertinacity may appear on the face of it, the root of it may, I have been led to think, be traced to certain extortions that, so long ago as in the year 1777, were brought to light by Howard. The principal passages, extracted from his "State of the Prisons, &c." 3d edition, *anno* 1784, pp. 15 and 16, are here subjoined. Between the extortions of that day as exhibited by Howard, and one of the oppressions of the present day as exhibited by Sir Richard Phillips, evidence of connexion having been observed, the display of it was at one time destined to form part of the present work: but the length of it being found altogether disproportionate, it has been necessarily discarded for the present, though on some future occasion it may perhaps find its place. Including some remarks on the above-mentioned statute, (14 Geo. III. c. 20,) to which Howard will be seen to allude, being one of the feebly-protecting statutes to which the ill-seconded exertions of that truly *Christian hero* gave birth, the deduction would be found to present a curious enough picture of *parliamentary* and *super-parliamentary* lawyer-craft, forming no unsuitable match with that which stands exhibited in the 5th chapter of the second part of this work: —

"Although acquitted prisoners are, by the late act in their favour (14 Geo. III.) cleared of gaoler's fees, they are still (says he) subject to a similar demand made by the *clerks of assize* and *clerks of the peace*, and detained in prison several days after their acquittal: at assize till the judges, at quarter-sessions till the justices of peace, leave the town; in order to obtain those fees, which the gentlemen say are not cancelled by the act. And yet the express words of it are — '*Acquitted prisoners shall be immediately set at large in open court.*' It is evident, then, that all fees of the commitment, in respect of the prisoner, are by this act totally abolished.

"Since the said act, the clerks of assize in some circuits have started a new demand upon the gaoler, for the judge's certificate of acquitment: viz. six shillings and eight-pence for the first prisoner acquitted; and a shilling for each of the rest, or two shillings for every one. I have copies of two receipts given by the clerk of the western circuit to the gaolers of Exeter and Salisbury. One of them is as follows:—'Received 1 April 1775 of Mr. Sherry, gaoler, one pound eight shillings and eightpence, for his certificate entitling him to his gaol fees for the county of Devon, from J. F * * * *, clerk of the assize.' The gaoler told me this was for twenty-three acquitted prisoners.

"I was informed at Durham, that Judge Gould, at the assizes of 1775, laid a *fine* of fifty pounds on the gaoler *for detaining* some acquitted prisoners for fees of the clerk of assize. But upon the intercession of the Bishop (proprietor of the gaol,) the fine was remitted, and the prisoners set at large; the judge ordering the clerk of assize to explain to him in London, the foundation for this demand.

"One pretence for detaining acquitted prisoners is, that 'it is possible other indictments may be laid against them before the judge leaves the town.' I call it a *pretence*, as the grand jury are often dismissed some days before that time, and because those who do satisfy the demands of the clerk of assize are immediately discharged. Another pretence is, the gaoler tells you 'he takes them back to knock off their irons.' But this may be done in court: in London, they have an engine or block, by the help of which they take off the irons with ease in a minute; the machine is brought into court, and the acquitted prisoner is immediately discharged. If, according to what I proposed, prisoners were tried out of irons, this pretext would be entirely removed.

"Clerks of assize, and of the peace, ought most certainly to have a consideration for their service to the public: the thing I complain of is what I am led to by my subject; that is, the demand that

§ 4. *Parliamentary Operations proposed.*

Under this head, a few short and compressed hints are as much as, if not more than, will

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be found "*endurable*," especially under *the Perceval* dynasty, from a self-created censor, who has neither a coronet in his pedigree, nor so much as a place in the *red book*: —

I. *Committee of Inquiry*, to collect and report the facts.

Subject of inquiry — cases of disobedience to acts of parliament on the part of persons *concerned in the administration of justice*; limitation necessary, at least in the first instance, confining the remark to such cases in which *misconception was impossible*. No fear that *by* this restriction the work would be left without materials to operate upon. *Without* such restriction, the work would have no end.

To render the import of the restriction clear, an example or two will suffice. Cases which have more or less of *arithmetic* in them will in general be found to afford the clearest samples: —

1. *One* such has been brought to view already. *Law*, prohibiting the giving, on such or such an occasion, to a person of such or such a description, money to the amount of more than *one* guinea. *Official transgression*, on an occasion of that same description, to a person of that same description, sum given, two guineas. — (See above, Part III.)

2. *Law*, in a case therein described, giving to the successful party *double* costs: — *official transgression* — and here the office is *judicial* — giving, and that avowedly, instead of the *double* costs, *single* costs, with an addition of only *half* single costs. Acts of parliament, upon which contempt has been poured in this shape, are to be found in swarms: they are pointed out by the indexes.

3. *Law*, as above, giving to the successful party *treble* costs: — *judicial transgression*, giving, instead of the *treble* costs, *single* costs, with the addition of only *three quarters* of the amount of single costs. Another swarm of statutes, upon which the cup of contempt has thus been poured to the very dregs.

II. *Parliamentary Resolutions*.

The habit of transgression established, what shall then be done?

The least that can be done is for the House (I suppose it the House of Commons) to pass a string of *resolutions*, condemning the practice, and denouncing eventual punishment in future. Happily this house, in conjunction with the other, possesses, in the right of addressing the king for removal, a virtual power altogether adequate to the purpose: — "Resolved, that in case of any misinterpretation put from henceforward upon any act of parliament, by any judge or judges, should such interpretation be deemed *wilful*, this House will address his Majesty, praying the removal of such judge or judges." After *wilful*, add, if necessary, "and not proceeding from error in judgment merely." Something to this effect may serve as a sample. But to fix the meaning, and save it, if possible, from being explained away, an example or two, as above, if the *law of the Medes and Persians* would admit of any such innovation, might be of use.

As to *retrospection* in any shape, on this question, victory must, for any part I shall presume to take, be left as a prize to eloquence. Honourable gentlemen, according to whose theory *bulls* take a pleasure in being *baited*, may try it upon *judges*.

If the measure they so freely mete to others,* were to be meted to them again (I speak of judges,) the question would be decided, and the *benches cleared*. But, in *my own* view of the matter, this measure, being in every application that can be made of it, a most false and mischievous one, it depends not upon them, by any use they can make of it, to make it otherwise.

§ 5. *Retrospective Censure, is it to be looked for?*

The notion upon every occasion assumed and taken for granted among lawyers is, — that to the judges — meaning the twelve judges and the chancellor — acting respectively in one or other of their many and various spheres — belongs the interpretation — the *uncensurable* as well as unappealable, and thence the absolute and uncontroulable interpretation — of whatsoever goes by the name of *law*: viz. not only of that *spurious* sort of law, which, by the oscitantcy of parliaments they have been suffered to make — to make *of* themselves and *for* themselves — but also of that only *genuine* sort of law, which is made by parliament.

In certain cases indeed, but in certain cases only, the transaction being, in some shape or other, capable of being brought before the House of Lords, the conduct of these official lawyers may to *some* purposes be weighed by *other* hands, be weighed by *non-learned* hands. But forasmuch as where any judicatory, composed of any one or more of these *thirteen* potentates, is in question, every idea of *censure* is excluded; *reversal*, or *modification* of the judicial transaction, is the only purpose to which *revision* is considered as capable of being performed: and though, in point of *right*, *non-learned* lords cannot, on *these*, any

is made directly or indirectly upon *acquitted* prisoners. [a]

"[a] The clerks of assize give to the judge large sums for their places. One of the present gentlemen gave for his place £2,500. On many accounts, these places ought not to be *bought* of the judges. If they were only *presented*, the fees might be much lower."

* Instead of *general utility*, *antipathy* the *ground* of punishment—*intensity* of the antipathy the *measure* of punishment, *retrospective*, the *application* of it.

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more than on any other occasions, be avowedly debarred either from *speech* or *vote*, yet, in point of *fitness* and *propriety*, the very appellation thus incontrovertibly applicable to them, suffices to indicate, how incongruous, on *these* occasions, any interposition from so weak a quarter would be deemed — if not for the purpose of *reversal* or *modification* of the interpretation itself, at any rate for any such purpose as that of *censure* to be passed on the *interpreters*.

In the putting of any such interpretation, being still but *men*—(for this concession, such is their candour and humility, they may be depended upon for making) — in the putting of any such interpretation, they are liable to fall into *error*: but, be that error what it may, at least so as *competency of jurisdiction* be out of dispute, it never can be so much as *censurable*, much less *punishable*.

Now in this I cannot but behold a doctrine, against which, had I a hundred hands, I would protest with all of them, as being inconsistent with all government. Admit *this*, parliament is but a tool — a corrupt as well as a blind and passive tool — in the hands of lawyers and their confederates. Admit but *this*, transgression will be heaped upon transgression, till the whole *power* of the country, and with it, in due season, the whole *property* of the country, will be avowedly in their hands: — admit but this, sooner or later they will *construe* the whole *money* of the country into *fees*, as at one time the clergy were on the point of consecrating the whole *land* of the country into *churchyards*: — since, let them carry their usurpations, their oppressions, their extortions, to ever so enormous a length, they have never anything to *fear* — they have still everything to *hope*, or rather to *make sure of*.

Reading or thinking of those judges, whose sanction was lent to *ship-money*, — Ah! how innocent were *those* (a thousand times have I said to myself,) in comparison of these of *modern* times! How much more clearly was *their* transgression a transgression against *the common welfare* — against law *as it ought to have been* than against law as it *then was!* By what a host of *precedents* was it not sanctioned! And, when *statute* law is out of the question, of what stuff is *law made*, or so much as *pretended to be made*, if not of *precedents?*

§ 6. *No fresh Acts requiring Obedience to existing ones.*

But above all things let us have no *fresh law*: I mean for the mere purpose of causing the existing ones to be obeyed: no enacting or re-enacting statutes; still less a *declaratory* act.

A declaratory act? — Observe the consequences. A falsehood committed: the supremacy of the king in parliament *abdicated, surrendered*: surrendered to the lawyers; and on so easy a condition — *to them*, of all mankind, so easy — as the employing false pretences in the exercise of it: pretending to have had "*doubts*," where it is impossible they should have had any: — pretending to have put upon a word a meaning, which it is impossible they should have put upon it.

In the first place, a falsehood committed. "*Whereas doubts have arisen* . . ." — Doubts arisen? doubts about what? — whether *immediately* means *immediately?* Are lawyers the only persons who know what *immediately* means? — are all but lawyers ignorant of it? After this first falsehood — committed by parliament itself — after this falsehood, and by means of it, comes the *abdication*, — the *surrender* — and the endless train of *falsehoods* — falsehoods *bespoken* of judges, by an order so clearly given, and which with such regular alacrity would be executed.

Yes: — to make a fresh act would be actually to yield the point to the lawyers, to *confirm* the usurpation instead of *checking* it. It would be allowing them the very *negative* in question: the negative which, without as yet daring to *claim* it, they have been exercising: a negative, which they want but this allowance to exercise *at pleasure*, and at *any* time, upon *all* acts. Take at pleasure any one future act: the negative having (suppose) been exercised upon *that* act, the worst that could happen would be *another* act: which act, when passed, would be just as completely subject to their negative, as its predecessor was: and so *toties quoties*. By every such act, the uncertainty — "the glorious uncertainty of the law" — would receive fresh confirmation, and, if possible, fresh increase: the *uncertainty* of the *law*, and the *certainty of ruin* to every man, not above the common ranks of life, who, with the words of it before him, should be ill enough advised to ascribe anything like *certainty* to it.

Taking cognizance of a *murder*, and inflicting punishment accordingly, the judges of the *Common Pleas*, acting as such, would themselves be *murderers*, and as such punishable. This is what our men of law themselves have not scrupled to declare.* Why? Because in this purely ideal case, if the *authors* of the transgression are *lawyers*, so are they also who are to *judge* of it and to punish it.

Here then *is* a transgression on which, according to their own doctrine, punishment may attach, even though the transgressor be a *judge*, acting in his character of judge.

Allow then (says a loyal subject to these disloyal usurpers,) allow then, that where the law transgressed by you is a law of the *king's* making — made by the king in parliament —

* Hawkins, P. C. Vol. I. B. I. Ch. 31, § 60.

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allow that in *that* case, if, to the conviction of every man that sees the words of the law, your trangression has been a completely wilful one, you are not exempt from punishment, — allow but *this*, this is all we want of you. What we do *not* want is — to see you in any such posture, as that which, in the case of *your own* putting, you would figure in. But what we *do* want to see you in is — a *kneeling* posture — if not literally, at least figuratively: — kneeling, like one of king James's parliaments, "*upon the knees of your hearts.*" Yes, and in this posture we must see you, or *parliament* is a laughing stock — *you* tyrants — and *we* slaves.

The constitution, in short, is already at an end, and the government a mere tyranny in the hands of the judges, if, to save them harmless against the punishment due for a transgression committed by them against the law, it be sufficient to them in all cases, or even in any case, to say, *such is the construction that we put upon it:* if, in the instance of this as of every other set of men, for the purpose of condemning them, and if guilty, punishing them, it be not, to whatever authority it belongs to sit in judgment on their conduct, competent, if so it appear, to pronounce that the allegation, express or implied, of their having believed such and such to have been, on the occasion in question, the intention of the legislature, is not true.

To the meanest subject that is to be found — to him on whose part, not only in relation to the particular *import*, but in relation to the very *existence* of the law in question, ignorance is at the same time most certain and most excusable, such ignorance affords not, in the breast of those arbiters of his fate, either *justification*, or so much as *excuse:** and by the mere supposition of it, and that an untrue one, shall such ignorance afford not only *excuse* but *justification* to those in whose situation, even without other transgression, such ignorance — ignorance of the law — is itself a crime?

No: — neither on this nor on any other occasion: no; on no occasion, nor on any account, on the part of learned gentlemen will there be any objection to fresh acts. Fresh acts, besides evidencing, on an occasion such as this, the impotency of the authority that made the former ones, make, on every occasion, fresh *confusion*, and fresh *fees*. Fresh acts make the pot boil brisk in the little kitchen of the attorney: fresh acts make the *cauldron* boil brisk in the great victualling offices attached to higher *fee'd* as well as *fee-fed* situations. No: on any occasion there will not, on the part of lawyers *in general*, be any more objection to fresh acts, than on a particular occasion there was, on the part of *Lord Melville*, to the bringing in, and carrying into a law, a bill for preventing a paymaster of the navy from applying the money of the people to his own use. On these subjects the understanding has been general and constant. So far as the *binding* and *punishing* force of the laws bears upon men who neither are in *power*, nor are to receive *protection* from men in power, so far they are to be *executed:* so far as they would bear hard upon men who *are* in power, or under the protection of men in power, so far they are to be *laughed at.*

In a word — to employ a system of classification the nomenclature of which is become as generally intelligible as the principles of it have been generally pursued — "*tinmen*" and "*great characters*" form the two *species* into which, to this purpose, the *genus* of his Majesty's subjects has been divided. What then is "*the use of the law?*"—*Bacon*, who started the question, talked about it and about it, but it was reserved for his successors to give a clearer answer to it. What is *now* the use of the law? To fall as a millstone *upon* the heads of "*tinmen*," to stand as a laughing-stock to "*great characters.*"

§ 7. *Prospect of Redress.*

"But, these remedies of yours, by what hands are they to be administered? — Lawyers? you will find none willing: Non-lawyers? you will find none able . . . . And when all lawyers and all non-lawyers are subtracted, how many have you left?"

I answer — to the difficulty of this remedy no eye can be more acutely or profoundly sensible than his are who thus ventures to propose it. But, under favour of the inexhaustible stock of varieties incident to the human character, causes of a *psychological* nature, inscrutable to human eyes, have manifested, now and then, their power, in the production not only of *evil* but of *good;* yea, and will continue to do so little by little: of *good*, in whatsoever shape *good* is at the same time *conceivable*, and in a physical sense *practicable*. In one age, A proposes: in another, B moves: in a third, C carries into effect. This is the rate at which *reform* and *improvement travel*, when the *surveyors of the highways* are lawyers.

Assuredly, had it been my lot to find myself in the place where *motions* are made, some five-and-twenty or thirty years ago, a *motion* for a *real committee of justice* would at least have stood upon the journals.

A committee of justice? Oh, yes: turn to the journals and *there* you may see — not a parliament in which you may *not* see — a committee of justice. In *that* place you may see it: but in that place you may as well content yourself with seeing it: for, until something which *would be* called *confusion*, take the place of that which *is* called *order*, you had better not expect, unless you are fond of disappointment, to see it anywhere else.

* Ignorantia legis excusat neminem.

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Regular as is the appointment of this regular committee, the functions of it compose a *sinecure*: a sinecure no less regular and profound, than if the *Perceval* allowance of £38,574 a-year (reduced, alas! to less than £13,000, we are told, by deductions that somebody or other knows of,*) were attached to the situation of each of its members, in recompence for the labour of receiving the emoluments, added to that of being *said*, without being so much as *supposed*, to do the duties of it.

But when *sinecures* are *gone*, *justice*, with the committees necessary for her restoration, may then *come*.

Such is the state of things at present. Such will continue to be the state of things, until, in some shape or other, *censure* — prompt as well as impartial censure — not to speak of *punishment* — shall take place of tardy and disregarded laws: — of *declaratory* acts, and *explanatory* acts, passed some score or some half-hundred years after the acts, those acts that wanted not to be *explained*, but to be *enforced*, had, *instead* of being enforced, been trampled on by "*great characters*," or explained and explained away — or, what is shorter, openly scorned and trampled upon by *judges*.

Whether law or tyranny reigns, is a question that will be decided by the notice or no notice taken in "*high situations*," and eventually in *low* ones, of this grievance. Till now, the tyranny had a mask: but now the mask is gone.

Great zeal everywhere for the maintenance of *subordination*. Subordination! But of what sort? Not of that of which *universal security* is the fruit: but of that, by which, for the benefit of "*great characters in high situations*," all but they, their confederates, instruments, and dependents, are kept in a continual state of insecurity and bondage.

Observing the House of Lords to have at length, by the continually increasing accumulation of *causes*, become, in respect of its appellate jurisdiction, converted into a sort of *delay-shop*, in which, in pieces of an indefinite number of years' length, delay is sold to dishonest men with other men's money in their pockets, — observing, moreover, the grievance to be to such a degree flagrant and notorious, as to have been publicly and repeatedly held up to view in the House itself, by the only persons by whom any plan of relief, it is universally understood, could, with any prospect of success, or, according to received notions, with any sort of congruity, be laid upon the *table* — in the month of January 1808, I took upon me to transmit to such of the Members of both Houses as could conveniently be reached, the outline of a plan (accompanied in every article with *reasons*,) which I had sketched out for that purpose, under the title of a "*Plan of a Judicatory, under the name of* THE COURT OF LORDS' DELEGATES."†

In my own mind, a still more important, though not an inseparable part of that plan, consisted in the transferring moreover, to the proposed judicatory, that part of the *immediate* jurisdiction of the House of Lords which consists in the cognizance of *impeachments*: the decision of the delegates in those cases to be *final*, *unless* reversed or modified by the House at large, on the declared ground of *censurable misconduct* on the part of those their delegates.

The main principle, on which this plan was grounded, was no other than that which, whether ever expressed or no in words, will in substance be found to have served as the main principle of the *Grenville act*; *viz.* that the sense of *responsibility*, without which there can be no tolerably adequate security either for *probity* or *intelligence*, is less and less acute and operative, in proportion as the number of those whose share in it is extensive.

It was at this price only, as it seemed to me, that *impeachment*, already proclaimed in parliament as having sunk into an empty name, could be restored to that character which it was originally designed, and till of late was universally supposed, to possess, and which at different times it has in some degree possessed, *viz.* that of serving as a check upon *political* delinquency in "*high situations*:" and this, without consuming in *judicature* any part of that time which is so habitually found insufficient for the still higher and more important functions of *legislation*: to the end that the judicial authority of the country might upon occasion be employed in *checking*, *removing*, and in case of need even *punishing*, instead of being, as at present, exclusively and avowedly employed in *protecting* "*unfitness*" on the part of "*great characters*" in high "*situations*:"‡ *punishment* being reserved for such low people as, having the misfortune of suffering from such "unfitness," have the audacity to complain of it.

Of a censorial tribunal so constituted, what did not present itself to my view as the least important use, was — the application of a check to that corrupt despotism, to which, as above, except in name and empty show, there exists not at present any check, *viz.* the despotism of the judges.

Not only in my own mind, but in my own papers, the plan had in it yet *other* parts, the object of which was to invest the Lords, by the instrumentality of these their *appointed* and *periodically removable* delegates, not only with the *power*, but with the *interest* (without which *power* is nothing,) that seemed

* Finance Committee, anno 1808, Report 3.

† *Vide supra*, p. 55. ‡ See Part I. Chap. IX

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necessary to engage and fix them in the habit of rendering to the community certain services, which, by the necessary changeableness of its composition, the *House of Commons* is disabled from rendering with equally assured steadiness and perseverance: — one of these services being the instituting and keeping up an uninterruptedly periodical series of *returns* and *accounts*, expressive of the *state* of the system of judicial procedure, under a set of *pre-appointed heads*, embracing the whole field of judicature, and bearing specific reference to the several distinguishable *ends of justice*: the other, the taking occasion of such causes as should come before this judicatory in the way of *appeal*, to facilitate the gradual conversion of the *rule of action*, out of the purely conjectural, tenorless, uncognoscible, and impostrous state of *unwritten, alias common* law — the shapeless production of a set of note-takers, compilers, and publishing booksellers — into its only cognoscible, determinate, and unimpostrous state, *viz.* that of what is called *written* or *statute law*: the joint and genuine work of the king, the lords, and the delegates of the people.

For such plan, no efficient acceptance could either be expected, or so much as wished, if by the establishment of it the preponderant weight and influence of the more essential branch of the constitution were exposed to any danger of being lessened: but, that no such danger could attach upon it, could easily, and would have been actually, put out of doubt.

That, in the opinion of leading persons of opposite parties, the above plan, (meaning of course such part of it as had in the above paper been presented to view) possessed a claim to serious attention, was a fact of which I found reason to make no doubt: and, on one part, such and so public was the opinion expressed concerning it, as to render it evident, that in one event, nor that altogether an improbable one, should the same opinion continue to be entertained of it, the establishment of it would be but a natural consequence.

Had the expression of such opinion been in any instance addressed to, or accompanied with any such intimation as that of a desire that it should be, or a thought that it would be, communicated to the person whose proposal was the subject of it, the communication might have been ascribable to that sort of civility, from which any serious thought about the matter is not always to be inferred: but the communication having in every instance been the result of mere accident, clear of all design, and probably to this hour not merely unheeded but unknown, the real existence of the opinion is in each instance but so much the less exposed to doubt.

In one instance, my satisfaction would, I must confess, have been more entire, if, when reflecting on past occurrences, it had been in my power to assure myself, that that part of the plan which by the author had been regarded as a *drawback*, though that an indispensable one, from the mass of advantage expected from the institution, had not in other eyes constituted at least a principal *recommendation* of it.

But among those who are agreed about *measures*, it would be not only a useless but a pernicious refinement to look out for differences about *motives*.

Nor would any such topic have been touched upon, but that, regarding the proposed institution, as above, as capable of operating in the character of a highly useful, if not of itself a completely effectual remedy, to the political disease of which so much has just been said, the design of this work seemed to require, that of the plan in question such part as has already seen the light should now receive the same degree of publication as this work itself does; for which purpose, copies of it have now been transmitted to the publishers.

Of this increased publicity one consequence is — that in the mind of him by whom the observation shall have been made (and by whom will the observation not have been made?) that a necessary part of the plan consists in the creation of several new situations, of which some could not but be in a pre-eminent degree *lucrative* ones, a supposition too natural not to follow in a manner of course will be, that in this proposed mass of emolument, some share had been looked for by the projector: and that, in his mind, it was the advantage so looked for that had constituted — if not the *sole*, at least *one*, final cause — of the project. It therefore, as mankind are constituted, appears to me to be, if not absolutely necessary, at any rate highly conducive, to the unbiassed examination of the plan, to declare, as I do most distinctly, that in any emolument that ever was proposed, or may ever come to be attached to it, I never had, nor ever shall I have, any more concern, than any other person under whose eye the present page may be lying at this moment: and that, in the contrivance of it, no person by whom, for himself, or any friend of his, any expectation of any part in such emolument could have been entertained, has ever been consulted with: no person having been in fact consulted with upon the subject, either before the paper went into circulation as above, or since.

Not that the plan is in itself a whit the better, or the less bad, for a circumstance thus collateral and incidental to it: and should any plan for the same purpose ever be brought on the carpet by any other hand, the author may be assured, that no personal advantage that may be found included in it for his own particular benefit, or that of any of his friends, will by me be pleaded in bar to the acceptance

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of it. In my view of the matter, be the measure what it may, instead of a *bar*, any advantage accruing to an individual, constitutes, I must confess, a plea *in favour* of it. The indication of any such advantage coupled with the appellation of a *job*, — this argument, as it is a very easy and a very common, so is it a very commodious argument for such politicians as, being conscious of their inability to form any *direct* and specific estimate of the advantages and disadvantages of any plan which requires hands for the execution of it, have recourse to this circumstance in the character of an article of *circumstantial* evidence, and that conclusive, establishing, and that at so small an expense as that of a single word, not only the ineligibility but the corruptness of the measure: — but it will not pass in any such character with any man, who, being duly aware that, in all its branches, government consists but in a choice of evils — evils produced, that in each instance greater good may come—holds himself, on the occasion in question, not incompetent to the task of weighing the good against the evil, and determining on which side the balance is to be found.

Supposing the plan in question received, as above, in all its projected parts, *the court of Lords' Delegates* would, without the name, add to its other characters that of a *school*, and that not only of *judicature* but of *legislation:* a school in which such of our noble youth (supposing any such to be found,) to whom the *study* might not, any more than the practice of that art does at present, appear beneath their *dignity*, might find the means of *instruction* as well as *exercise:* a school in which not only the *exercise*, but, by means of the exercise, the *prizes*, might, instead of remaining a monopoly in the hands of those whose interest it is that the body of the law be in all its points in as bad a state as possible, lie open to those also whose interest, in the shape of reputation and conscience, would on this occasion act in *alliance* with their duty, and whose interest would not, at any rate, be in any shape at *variance* with it.

Lastly, being occupied in preparing with all expedition for the press a work on *parliamentary reform*, in which, if my own conception of the matter be correct, the necessity of such a measure is placed beyond the reach of doubt, followed by a plan for that purpose, accompanied in each article with *reasons*, and answers to objections (a plan in the contrivance of which I saw but little reason to go in quest of novelty,) it seemed to me of use that it should be understood, and that most clearly, that to engage a man's opinions and affections in favour of such a measure, no other propensity is necessary than a desire — not to pull down, but to uphold — not to wrest power out of the hands of present possessors, but to render them somewhat less generally and flagrantly inept than at present for, as well as disdainful of, the exercise of it: that so, when among those questions which sooner or later will inevitably be urged, this also should be put — *viz.* what are the occupiers of that *room* with the *gilt chair* in it good for, unless it be to serve as tools in the hands of the —— *general*, who now and then comes in form and sits in it — a set of implements constituting, when put together, a clumsy piece of machinery for producing the effect of a simple negative — those to whom any such searching question happens to be addressed, may have some better answer at hand than what has been furnished by the threadbare and transparent fallacies that have hitherto been seen to be employed upon that service.

The *Hospital of Incurables* was a name invented for that *great room* — not by any such plebeian as myself, but by a *noble practitioner* (the Earl of Chesterfield,) to whose penetrating eye the condition of all the *wards*, with all the *patients* in it, had by long observation and experience been rendered so familiar. By him, as the name thus bestowed bears witness, the condition of the inhabitants was regarded as already desperate. For my own part, whether it be, that being more given to *hope*, and less to *satire*, as well as somewhat more accustomed to look out for expedients, than that veteran courtier, my judgment has been led astray by my affections, my views of the case are less desponding. As *hospitals* are apt to be, and as this in particular was once pronounced to be* — pronounced so by the inhabitants themselves when not half so numerous as at present — it appears to me, as it has done to others, too much *crowded:* in which case it is the less to be wondered at, if, of a species of *vital gas* known in the *old nomenclature* by the name of *public spirit*, a morbific deficiency should be found: — a deficiency, of which the principal effects and symptoms are an habitual lethargy and prostration of strength, admitting of no abatement but what may happen to be produced by the accidental pricking of some such *stimulus* as that of *a canine appetite for fat sinecures.* For the *over-population*, the remedy is too simple, as well as by those whom it concerns most nearly too well approved,† to need any further mention in this place. As to the *public spirit*, the apparatus for the injecting of it has been already indicated.

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* See Blackstone's Commentaries, I. Ch. II. p. 152.

† Ibid. "In the reign of King George I. a bill passed the House of Lords, and was countenanced by the then ministry, for limiting the number of the peerage."

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"SWEAR NOT AT ALL:"

CONTAINING AN

EXPOSURE OF THE NEEDLESSNESS AND MISCHIEVOUSNESS,

AS WELL AS

ANTI-CHRISTIANITY,

OF THE

CEREMONY OF AN OATH:

A VIEW OF

THE PARLIAMENTARY RECOGNITION OF ITS NEEDLESSNESS,

IMPLIED IN THE PRACTICE OF BOTH HOUSES;

AND AN

INDICATION OF THE *UNEXCEPTIONABLE SECURITIES*, BY WHICH WHATSOEVER PRACTICAL GOOD PURPOSES THE CEREMONY HAS BEEN EMPLOYED TO SERVE, WOULD BE MORE EFFECTUALLY PROVIDED FOR.

TOGETHER WITH

PROOF OF THE OPEN AND PERSEVERING *CONTEMPT* OF *MORAL* AND *RELIGIOUS PRINCIPLE*, PERPETUATED BY IT, AND RENDERED UNIVERSAL,

IN THE

TWO CHURCH-OF-ENGLAND UNIVERSITIES,

MORE ESPECIALLY IN

THE UNIVERSITY OF OXFORD.

(Pre-detached from an Introduction to the "Rationale of Evidence.")

BY JEREMY BENTHAM, ESQ.

FORMERLY OF QUEEN'S COLLEGE, OXFORD, A. M.

ORIGINALLY PUBLISHED IN 1817.

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*** By 5 & 6 W. IV. c. 8 (12th June 1835,) entitled, "An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof: and for the more entire suppression of voluntary and extrajudicial Oaths and Affidavits,"—certain enactments were preceded by the following preamble:—"Whereas, by an Act passed in the session holden in the 1st and 2d year of the reign of his present Majesty, intituled, 'An Act to abolish certain Oaths and Affirmations taken and made in the Customs and Excise departments of his Majesty's revenue, and to substitute Declarations in lieu thereof' (1 & 2 W. IV. c. 4,) and by other enactments subsequent thereto, the number of oaths and affirmations required to be taken and made in these departments has been greatly diminished, and the beneficial operation of the said recited act, and such other subsequent enactments, gives ground to believe that the number of oaths and affirmations may be yet farther reduced in those and other departments of the State." This statute was repealed, and new provisions substituted, by 5 & 6 W. IV. c. 62 (9th September 1835,) which enacted (§ 2,) That where Oaths are administered in proceedings connected with the Customs or Excise, the Post-office, the office of Stamps and Taxes, the office of Woods and Forests, Land-revenues, Works, and Buildings, the War-office, the Army Pay-office, the office of Treasurer of the Navy, the Accountant-General of the Navy, or the Ordnance, his Majesty's Treasury, Chelsea Hospital, Greenwich Hospital, the Board of Trade, the Secretaries of State's offices, the India Board, the Audit office, the National-Debt office, or any other office under controul of the Treasury, the Lords of the Treasury may substitute Declarations. (§ 5,) Persons making false affirmations, in cases connected with the revenues of the customs or excise, stamps and taxes, or post-office, guilty of misdemeanor. (§ 6,) The oath of allegiance still to be taken by persons in office. (§ 7,) The act not to abolish judicial oaths. (§ 8,) It is made lawful for the universities of Oxford or Cambridge, or any other bodies corporate and public, entitled to administer oaths, to substitute declarations. (§ 9,) Churchwardens and sidesmen no longer to take oaths, but only to make declaration of faithful and diligent performance on entering on their duties. (§ 10,) Declarations substituted for the oaths appointed to be taken under highway and police acts. (§ 11,) Persons applying for patents under the great seal, instead of the usual oath, to make a declaration in the same terms. (§ 12,) Declarations substituted for the oaths under the pawnbroker's acts, to be taken in the same terms, and on the same occasions. (§ 13,) Justices of the Peace and others are prohibited from taking oaths or affidavits "touching any matter or thing whereof such Justice or other person hath not jurisdiction or cognisance by some statute in force at the time being,"—the enactment not to apply to oaths in matters connected with the preservation of the peace, or prosecutions, or proceedings before Parliament; or to oaths necessary to validate legal instruments to be used in foreign countries. (§ 14,) Where it was the practice of the Bank of England to take oaths for facilitating transfers, or as to the loss or destruction of notes,—declarations substituted. (§ 15,) Declarations substituted for oaths of parties and witnesses, in actions in the colonies, "for or relating to any debt or account wherein any person residing in Great Britain and Ireland shall be a party, or for or relating to any lands, tenements, or hereditaments, situate, lying, and being in the said places." (§ 16,) The attesting witnesses to any testament or deed, may verify the execution by declaration in writing. (§ 18, 21,) A form of voluntary declaration to be taken in miscellaneous cases, the taking which, or any other declaration substituted for any oath, falsely, renders the party guilty of a misdemeanor.—Ed.

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ADVERTISEMENT.

In the state in which it is here seen, this tract was printed anno 1813. In the summer of the year 1813, in passing through the University of Oxford (in which seat of learning, above half a century ago, the author had taken the last of two degrees,) by the hands of a common friend he caused to be delivered into the hands of one of the Reverend the Heads of Houses, who had been mentioned to him as being of the number of those, in whose instance the hydrophobia of innovation was supposed to be least rabid, a copy of this tract; and staid there long enough to hear of its having undergone his perusal. Of the communication thus made, the motive was—a hope, how small soever, that possibly, by means of the representation thus conveyed, some course might, in that seat of professed piety, be taken, for the abolition of a practice, which, not to profane only, but to reverend and orthodox eyes, had already, in more instances than one, presented itself, and had accordingly in print, and in multitudes of editions, been held up to view, as impious.

Whatever other imputations the publication of this tract may be thought to be open to, *precipitation* therefore will at any rate not be of the number: neither on the one part *precipitation*,—nor on the other part, *want of notice*.

After all, this tract might for any further length of time have slept upon the shelf, but for the addition so lately made of the scourge of religious persecution to the yoke of despotism:—for a pretence for punishment as for blasphemy—and that by imprisonment without trial (infliction by every clergyman who is in the commission of the peace) the so recently instituted practice of putting the composition of nobody knows what "*miserable sinners*," who triumphed over piety and sincerity about two centuries and a half ago, upon a level with the discourses of *Jesus*; and, by men by whom the profession of piety has been converted into an instrument of power, the exertions so lately made, to bolster up by the force of their punishments the imbecility of their arguments.

What is here meant is not unknown to Mr. Wilberforce. Of the perjury which, so long as he has had eyes to see, has been staring him in the face, let him disprove the impiety, or stand forth at length, and use his endeavours to put an end to it.

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SWEAR NOT AT ALL.

MAT. V. 34.

SECTION 1.

Oath. Incongruity of the assumption, on which its supposed BENEFICIAL *efficiency is grounded.*

BY the term *oath*, taken in its largest sense, is universally understood, a ceremony composed of words and gestures, by means of which the Almighty is engaged eventually to inflict on the taker of the oath, or *swearer*, as he is called, punishment, in quantity and quality, liquidated, or more commonly unliquidated, in the event of his doing something which he, the swearer, at the same time and thereby engages not to do, or omitting to do something which he in like manner engages to do.*

Correlative to the term *oath*, is the term *perjury*, and its conjugates to *perjure oneself*, *perjured*, *perjurious*; among which *perjury* is understood as designative of the conduct, whether positive or negative, which stands in opposition to the conduct engaged for, as above.

In so far as, in a state of political society, application of this ceremony has been made to the purpose of producing any practical effect, other persons besides the swearer have commonly, in some way or other, borne a part in it: one person at any rate, *viz.* the person by whom the oath is said to have been *administered*: and commonly some other person or persons, by whose authority and order, or at whose instance at least, it has been *administered*, or at any rate *taken*.

The intervention of any such third person is not essentially and inseparably included in the notion of an oath: but it is only in so far as some such intervention has place, that it belongs to the present purpose.

By the ceremony thus described, may be seen at the least two persons, of very different descriptions, over both of whom power is exercised, or supposed or endeavoured to be exercised; *viz.* 1. Man, the individual swearer, on whom, by means of the eventual punishment in question, the effect of a law, whether prohibitive or compulsive, is produced, or supposed or endeavoured to be produced; 2. The Almighty, who, in the event in question, is supposed or endeavoured to be engaged to inflict such punishment.

Considered in respect of the purpose to which it is applied or applicable, an oath has commonly been distinguished into *assertory* and *promissory*: and, in conformity to this distinction, the *assertory* sort of oath, it will naturally be observed, is the only sort of oath which belongs to the present purpose; — which bears any immediate relation to the subject of *evidence*, — to the subject of *testimony at least*.

From this distinction, a natural inference again is — that, let it even be supposed that, in the promissory oath, condemnation should on any just ground be passed, yet by such condemnation the assertory — the testimonial oath — the oath considered as confined to the purpose of securing trustworthiness to testimony — would, notwithstanding such condemnation, remain untouched.

In opposition, however, to this notion, it must be observed, and upon consideration will be acknowledged — 1. That the nature of the ceremony — the nature of the instrument thus employed — is one and the same, to what purpose soever it be applied; 2. That to every oath alike belongs, in truth and propriety, the quality and name of a *promissory* oath, and that accordingly the *assertory* oath, and thereunder the *testimonial*,† are neither more nor less than the *promissory* oath applied to that particular purpose.

* In every case, except where the observance promised consists in speaking truth, as in the present case, in which case the oath is said to be *assertory* (of which immediately,) *i.e.* in every case in which the oath is commonly spoken of in the character of a *promissory* one, the term *vow* has moreover been indifferently employed in speaking of it. See, in Cruden's or any other Concordance, the words *oath* and *vow*.

† In the way in which the testimonial oath is commonly employed and administered, the observation, of its being included, as above, under the promissory, will, it is supposed, be acceded to without difficulty; since, in that case, the ceremony is seen at the first glance to precede the operation which it is employed to influence. By a person from whom assertions or declarations of a testimonial nature are about to be extracted or received, the oath — the ceremony, whereby the qualities in question are supposed to be secured — is performed in the first place, and thereupon comes the testimony by which the promise so made is either kept or broken, and perjury accordingly abstained from or committed.

But, suppose the testimony first given *without* oath: and thereupon, immediately or at any time

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By the *promissory*, as opposed to the *assertory* oath, that which a man may undertake for, is — anything whatsoever that is in his power to do, with the exception of the giving correctness and relative completeness to some *assertion* or other, whatever it be, to which, for the purpose of securing to assertion those qualities, it is applied: by the *assertory* oath, that which is undertaken for is — the giving to some *assertion* those same qualities: but, in both cases alike, something or other is *undertaken for, engaged for, promised:* in both cases alike, an *obligation* is imposed, or supposed or endeavoured to be imposed: in both alike, for the purpose of giving to such obligation a binding force — a force derived from the religious sanction, — a *ceremony*, and the same ceremony, is employed.

On the supposition that, by man, over the Almighty, *power* should, to this or any other purpose, be exercised or exercisable, an absurdity, than which nothing can be greater, cannot be denied to be involved: — man the legislator and judge, God the sheriff and executioner; — man the despot, God his slave.

If, in any given instance, on the part of the almighty executioner, any exception to the rule of obedience be supposed, in that instance the effect of the ceremony is nothing; the case is exactly as if there had been no such ceremony. But if in any one case it be thus inefficient, how comes it to be otherwise in any other case?

Yet this or nothing is what is supposed: this or nothing if the supposition be, that, — after and in consequence of the promise thus made, and the breach of it — the perjury — committed, — punishment — the result of the will and act of God — takes place of course, — that is, to a certainty, and in every individual instance.

If, the supposition of absolute certainty being deemed too strong, that of *probability* be substituted to it, still, so long as it amounts to something, and that something produced by the mere ceremony, independently of any other cause, — though it be but a probability, for example, as 1 to 10, — the supposition is in substance one and the same. God is a negligent servant indeed, but still a servant: he disobeys the orders nine times out of ten, but he pays obedience to them on the tenth.

The circumstance by which the supposition of the influence of an oath, over the supernatural agent in question, is saved from the ridicule that attaches upon the supposition of the influence of a magical incantation* over the supernatural agent to which that instrument is applied, is, that in the case of the *oath*, the scene of its influence is placed in a state of things of which no human being is in this life supposed to be or about to be witness: whereas, in the case of the magical incantation, the scene lies here below, and it is in this life that men are bid to look for it: — the moon brought down upon the earth, as according to the Pagan system: disembodied spirits of this or that denomination brought down or up to the same place, as under the Jewish and Christian, well or ill interpreted.

> Quid non carmina possunt?
> Carmina de cœlo possunt deducere lunam.

Undertaking to defend the use of this mysterious instrument, what will a man say of it? That there ever has been or ever will be so much as a single case in which these effects have or will have been produced by it? Will that be his supposition? If so, then is the absurdity thus charged upon it admitted to be involved in it: — That there never has been nor ever will be any such case? If so, then is the supposition admitted to be a mere fiction; and, in proportion as this admission is acceded to, the ceremony is divested of its binding force, and therewith of every useful influence that can ever have been ascribed to it, or expected from it.

The effect, to the production of which, if possible, man and God both are thus sought and supposed to be engaged, — the line of conduct, to the observance of which man is thus sought and supposed to be compelled, — say that it *is* — say that it is *not* — such, for the enforcement of which, punishment, to be inflicted by such hands—punishment, in quantity as well as quality properly adapted to the purpose *ought* to be, may with reason be expected to be, applied: — if *yes*, the punish-

afterwards, an oath taken, importing that the testimony so already delivered was true? On consideration, it will be seen, that even in this case there exists a *promissory* oath. In the first place comes the ceremony; and with it comes the promise to speak true: thereupon and thereafter comes the assertion to which it immediately applies, viz. that the testimony, which had been delivered antecedently to the ceremony, is true: take away this subsequent assertion, take away the promise to give truth to it, — no assertory oath — in a word no complete oath — at all remains.

Thus much merely for clearness of conception. As to any practical purpose, whether the nature of the case does or does not admit of any assertory oath which is not a promissory one, is a question altogether void of importance.

* Magic not being now in fashion, of the existence and exercise of the sort of power indicated by that term, the supposition would be an object of scorn and ridicule. But, of the existence of the ideal power so denominated, the supposition is, in the scale of absurdity, inferior to that of the existence of the power, to the belief of which the ceremony of an oath is indebted for whatever efficiency, whether to a good or a bad purpose, it possesses. By any *magical* incantation, it is only over this or that imaginary being of a subordinate class that the power is supposed to be exercised: by the ceremony of an *oath*, it is always over the Supreme Being, who thereupon, supreme as he is, is to the extent of this power subject at the same time.

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ment sought and supposed to be applied by the oath is *needless*; and, being needless, it is *superfluous*, and on that account improper and mischievous: if *no*, it is *undue*, and on that account again, mischievous: mischievous in a double and more extensive degree: mischievous in a limited extent, by the useless suffering it inflicts on the individual so punished: mischievous to an unlimited extent, in respect of the mischievous line of conduct to which it seeks to engage him, and with a degree of success (of which presently) but too frequently exemplified.

Observe here another absurdity resulting from the supposition attributing a penal effect to this ceremony. Once more — the punishment which, independently of it, is attached to the transgression meant to be prevented — in the present case to mendacity — must in supposition be either adequate or not adequate. If adequate, then is there no need for any additional punishment: — for any such punishment as, in case of mendacity, in which would be included the profanation of the ceremony, would be the effect. If not adequate, then observe the consequence: To his justice, *that* being the attribute here in question, God cannot give adequate exercise, unless and until man gives him leave. God's justice is thus kept in a state of dependence on human folly or improbity.*

Concerning the absurdity — the *simple* absurdity — of the supposition, thus much may suffice. Note now the *complex absurdity* — the *inconsistency* — involved in it. For this purpose, set to work two *swearers* — with or without to each of them an *administerer*, — with or without, to each of them, a *prescriber*, an *ordainer* of the oath: two swearers, swearing, and thus respectively engaging themselves, to direct their utmost endeavours to the production of two opposite and altogether incompatible effects. By the draughts thus drawn for eventual punishment, what, according to the current theory, is the effect produced upon the Almighty? What but that he is *compelled*, or, if that word be too plain and clear, *engaged*, to lend his power, at the same place and time, to the productions of these same opposite and incompatible effects?

For the field of action, meaning the geographical field, take for example England: for the political field, religion, — technical religion: in it place two contending religions, Catholicism and Church-of-Englandism: — swearers and proposed actors, James and George, two contenders for the throne: — what James swears is — that, in respect of wealth, power, dignity, and other good things of all sorts, the teachers and professors of the old religion shall, so far as depends upon his endeavours, be, absolutely speaking, as great as possible, and, speaking by comparison, as much greater as possible, than those of the new one: — What George swears, is — that, so far as depends upon his endeavours, the reverse of all this shall have place. According to the theory of the binding power of an oath, and the supernatural punishment attached to perjury, what is the work thus cut out for the Almighty? To combat each religion, and at the same time and place to defend it: to combat it with one hand, to defend it with the other: to employ one person to combat it, and at the same time and place, another person to defend it.

Pressed by these consequences, yet unwilling to give up altogether an instrument of such antiquity, and to which common opinion is in use to attach so much importance, "No," says somebody, "this is going too far: this inference about punishment is more than what the ceremony, including the words and gestures of which it is composed, could upon a closer view be seen to warrant. '*So help me God!*' says the royal swearer in the coronation oath: '*So help you God!*' says the administerer in other cases: — what is there about punishment there? — Then comes the kiss given by the swearer to the book: what is there about punishment in this kiss?"

True, says the answer, nothing.

But among a great variety of forms, by all of which, in different ages and countries, and in particular in this age and country, an oath has been alike considered as being administered and taken, this is but one: and by all of them the effect considered as produced is of the same kind, — by all of them, that which has just been stated. Moreover, in all these cases, as often as the engagement so taken is considered as having been violated, *perjury* — or what, in the language in question, is the equivalent of that word — is the name by which such violation is designated: — the signs infinitely diversified, the thing signified everywhere the same: — everywhere either that which is above described, or nothing.

Section 2.

Mischievousness of this instrument considered in a general point of view.

From mere incongruity, in this case as in any other, any inference that could be drawn

* If the majority of a great nation are to be kept in a state of everlasting degradation, — with probable, not to say just, cause of eventual revolt perpetually administered to it, — for what reason is it to be thus dealt with? Is it because, independently of all oaths, it is a king's duty so to govern? No: but because, by an oath which he took, he swore that he would so govern: which oath taken, the consequence is, that should it happen to him to govern otherwise, God stands engaged to punish him as for perjury. If the supposed effect of an oath be any thing less than this, whence comes the fear of doing, after and notwithstanding the oath, exactly what would have been done had there been no such oath?

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might not, when considered in a practical point of view, be regarded as having much claim to attention: from mere incongruity, that is, if so it were, that, of the institution in question, the effects, taken all together, presented a balance on the side of utility.

True: but, on inquiry, what (it is supposed) will appear clear beyond dispute, is — that of its influence, the real, not to say the whole, amount is on the contrary side: to the here supposed or any other *good* purpose, its *inefficiency* complete; to *bad* purposes, in no small variety, as well as number and extent, its *efficiency* indubitable.

Of its *inefficiency*, viz. to any useful purpose, — and in particular to the purpose of securing fulfilment to any useful obligation to which in that view it is attached, — a view will be given presently.

Of the infinite variety of applications of which this instrument of government is susceptible, the only one which in a direct way bears upon the present purpose, is that which regards the subject of *evidence*. In the list of the mischiefs of which the use of it will be found productive, it is to those which result from the application made of it to this particular purpose, that the first place must accordingly be acknowledged to be due. But, the instrument being in all cases one and the same, — the use of it not being, in this particular application of it, maintainable, without being maintained in every other application that, in this country at least, continues to be made of it, — hence it is, that, in the account of its mischievous effects, to those which result from this particular application of it in its character of an *assertory — testimonial — oath*, must be added those which result from its application in the character of a *promissory oath at large*.

Before the consideration of its mischievous effects in this or that particular shape is entered upon, notice is due to an observation, which on this occasion will naturally enough be apt to present itself, as in practice it has been in use to present itself, in the character of an answer; — an answer, clearing the instrument in a great degree, if not altogether, of all imputation on this score. When, in the case of this or that application of it, pure mischief is beyond dispute seen to follow from the observance of it, the oath, it is said, is in this case *void*: absolutely null and void. In form and appearance it is an oath; but, not having the binding force of an oath, it has not the substance. This being the case, the conclusion is — that, upon the true and genuine instrument, whatsoever mischiefs may be the result of the use made of any such spurious instrument, ought not to be charged.

The oath is void! — The expression is familiar enough, but what meaning is there at the bottom of it? The oath, this particular oath, is void; *i. e.* is not really binding upon the Almighty, whom it undertakes to bind? Is this what is meant? If so, the truth of this observation must be admitted to be above dispute: for by what human instrument, under this or any other name, can omnipotence be bound? But, in regard to mischievous effects, be they what they may, it leaves the case where it found it.

By *man* — by the men upon whose agency it may come to have a bearing, — by them will it or will it not be considered — by them, let its effects have been in ever so high a degree mischievous, has it not been considered — as binding upon them? The oath that *Jephthah* took, was it or was it not by Jephthah considered as binding upon Jephthah? The oath that Herod took, was it or was it not by Herod considered as binding upon Herod? The oath which George took, was it or was it not considered by George as binding upon George? Such are the questions that call for answer, when, whether in speaking of it, any such words as *null* or *void* be employed or not employed in speaking of it, its effects, good and bad together, experienced and probable, come to be weighed.

"The oath," says the casuist, — "the oath which Herod took — was a *void* oath:" — What, in the mouth of the casuist, is the meaning of this phrase? Either this or nothing, viz. that, in the situation of that tyrant, the casuist, had it happened to him to have taken such an oath, would not have considered himself as bound by it. May be so: but the *charger*, — the fatal charger, — was it the less cruelly stained by innocent blood?

"Taken in the sense in which George is supposed, or pretended to have understood it, the oath which he took would," says the casuist, "have been a *void* oath." Be it so. But four millions of his own subjects, in the breast of each of whom was inclosed a soul not less precious than his own, a conscience not less entitled to consideration than his own — four millions of his own countrymen, with their posterity to the end of time — were they the less peremptorily treated in the character of an everlastingly degraded cast, composed of everlastingly dangerous adversaries? Were the hands of the sovereign less inexorably employed, in sowing the seeds of rebellion broad cast, and sharpening the axe for heads, more than could find room in many a thousand *chargers*?

Besides the irrelevancy of it, as above shown, — at the bottom of every observation, for the expression of which any such adjective as *null* or *void*, any such substantive as *nullity*, is employed, an inconsistency, an irremoveable inconsistency will be found. From the ceremony, and that alone, is the binding force, whatever it be, that is supposed to attach on the case, derived; from the ceremony

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and nothing else: — and the ceremony, beneficial in any degree — pernicious in any degree in its application—the ceremony, which, except the application, is all there is in the case, is it not in every case the same?

Section 3.

Its inefficiency in the character of a security against deceptious incorrectness and incompleteness in evidence.

Or the utter inefficiency of this instrument, when employed by itself, and without either punishment or shame for its support, the demonstration, for such surely it might be made, would, for the completion of it, require more room than can here be spared.

For everything but demonstration, the bare term *custom-house oath*, added to the *perjurious unanimity* secured, in the case of *jurymen*, as above, by impending torture, might of themselves perhaps suffice.

It is not without that extreme reluctance, of which the causes may without much difficulty be imagined, that the necessity is here yielded to of adding *university oaths*: — English university-statute-enforcing oaths.

When the question has been concerning a Mahometan, a Hindoo, a Chinese, — or even a Christian, if a Catholic, — great doubts have been entertained, by pious and learned Church-of-England men—lawyers—and non-lawyers — concerning the degree of binding force, which, in any such heterodox bosom, ought to be ascribed to the ceremony of an oath.

But, in the case of one of the two English Universities, — thence in the case of about one half of the English Church-of-England clergy, — the right reverend prelates not excluded, — if conduct be any proof of opinion, no room can be found for doubt. Ask what regard? — answer, Not a particle. Ask what binding force? — answer, None whatever.

In the University of Oxford, on the admission of every member, an oath is administered to him, by which, without exception, "all the statutes, privileges, and customs of the university," and, for aught appears, present and future, cognoscible and uncognoscible are promised by him to be observed.*

Of this treasure of antique wisdom, — part polished, part recast, part originally cast — nobody knows in what proportions — by the hand of Laud, † — so much as is contained in about 261 closely printed Latin pages, and which makes but a part, nor that a determinate one, of the whole body,‡ is at the same time put into the young man's hand: — what else there may be of it remaining locked up in the archives, invisible to every eye but those of the members of the governing aristocracy — the heads of houses.

Amongst the provisions in these statutes are to be found articles in no small abundance, which, to every member without exception, are objects of continual, notorious, and open violation. Every member violates them himself, every member sees them continually violated by every other.

Of the ordinances thus violated, a great part, not to say the greater, are (it may perhaps be said) manifestly and completely useless: and accordingly the violation of them not mischievous. Are they so indeed? For the purpose, then, of the argument at least, be it so: but *the inefficiency of the ceremony*, which is the only point here in question, is not the less incontestable.

Talk of custom-house oaths, when such are the university oaths! Talk of merchants, when of such is the bench of bishops! In a custom-house, men pure from perjury must surely be to be found: so at least let us hope, were it only for the credit of those, who, in the case of universal perjury, would be the universal suborners. In a custom-house many, in the University of Oxford — pure from perjury no man — for ages has been, — or, where the swallowing the about-to-be-continually-violated oath continues to be, amongst other breaches of sincerity, the price exacted for admission, will ever be, — to be found.

In that chief nursery of Church-of-England piety, on the part of the rulers at least, never was *perjury* more completely unsusceptible of any such excuse as might be supposed to be afforded by *inadvertence*: on the part of the same reverend persons, in whose power it has always been, either to keep the oath or to abolish it, never was *subornation of perjury* more determinate. Not to speak of indirect, though not the less intelligible, charges, — from one of themselves,‖ for some thirty or

* Page 261. "*The oath at the matriculation of a scholar.* Tu fidem dabis ad observandum omnia statuta, privilegia, et consuetudines hujus Universitatis Oxon. Ita Deus te adjuvet, tactis Sacro-Sanctis Christi Evangeliis."

† Laud's Diary, as referred to in his Life in the Biographia Britannica: — Dr. Newton, Principal of Hertford college, in page 19 of his "University Education," London, 1726, hereinafter mentioned.

‡ "Parecbolæ sive Excerpta e Corpore Statutorum Universitatis Oxoniensis .... In usum Juventutis Academicæ," says the title-page. "Oxonii e Typographeo Clarendoniano, 1794. This is the date of that which has recently been put into my hand, as the last edition extant. Of my own copy, which, at my own matriculation, was put into my hands in 1759, the date is 1756. Number of pages in the edition of 1756, 254: in that of 1794, 261.

‖ Here follows what is said by the Rev. R. Newton, D.D., at that time Principal, in a tract, intituled, "*Hints and Statutes for the Government of Hertford College, in the University of Oxford.*" London, 1747, pp. 102, p. 98. "And for a student or scholar to take an oath at his entrance that he will observe the statutes, there

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forty years past, in another book, which, written by another member not only of the same university but of the same sacred function, has gone through many more editions than the statute-book itself,*—the charge has been urged in terms so pointed, as to take from this repetition of it, all merit on the ground of originality, and therefore surely to save it from all reproach, not only of calumny, but of unnecessary asperity.

From the perjury thus rendered habitual and universal, ingenuity, as will be seen further on, was at an early period employed, in the endeavour to remove the *name*. But by this very endeavour, as will also be seen, the *charge*, instead of being removed, has been but the more directly pointed, as well as the more firmly fixed.

"What?" it may here be said—"whatever inferences may be found deducible from this state of things, is this then to be one, viz. that to the testimony delivered, upon any occasion, under the sanction of an oath, by any of the reverend, right reverend, and other distinguished persons, at whose instance the sort of perjury above exhibited has been constant and universal, no more regard would be due than to that of an equal number of persons convicted of perjury, viz. of mendacious testimony delivered in a court of justice?"

My answer is—By no means. Not more revolting would any such inference be upon the first mention of it, than upon examination it would be seen to be unfounded, as well as irrelevant, with relation to the present purpose. What is *not* here *contended* for is—that in the instances of those by whom this useless promissory oath has thus been violated, testimony, whether delivered with or without oath, has a less chance for being pure from mendacity than in the instance of those, by whom no such oath having been taken, no such oath has been violated. What *is* here *contended for*, is—that, in those same instances, if after an assertory, if after a testimonial oath taken, testimony is pure from mendacity, such purity has for its cause—not the force of *this* instrument, but the force of those instruments, one or more or all of them, which have already been brought to view, in the general character of the *tutelary* or *improbity-restraining*, and in the particular character of the *mendacity-restraining* sanctions. What in these same instances is *denied* is—*not* the existence of veracity in the character of an effect, but the efficiency, the relative efficiency, of the instrument here in question, in the character of a cause productive of, or contributing to the production of, that effect. Fear of eventual *punishment* in most cases—fear of eventual *shame* in all cases—fear of punishment at the hand of the Almighty—these are the springs of action that have been brought to view in the character of improbity-restraining forces in general, and mendacity-restraining forces in particular. In the present case, so it is, that of these three forces, the two first at least have notoriously no application. In this case, the oath is taken by everybody, everybody violates the oath so taken, nobody is ever punished for violating it, nobody is ever put to shame by the violation of it. And such, then, is the ground of the inference,—viz. that, to whatsoever object directed, whether to the prevention of transgression in any other shape, or to the prevention of transgression in the particular shape of mendacity, the instrument in question, the ceremony of an oath, is inefficient and useless.

In every case, whatsoever be the force in which the legislator puts his trust, it concerns him surely to know it for what it is: and

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can be no occasion, *if* the imposing an oath upon him for that purpose *were innocent* .... *Young* men will often break them without adverting that they do so. To them, an oath to observe the statutes will be a snare." In conversation, in conduct, and in print, from some year earlier than 1725, to some year later than 1747, did this truly conscientious divine continue to give vent to the uneasiness occasioned by the load, which, ever since the year 1634, has by Archbishop Laud, in his quality of chancellor and legislator of this university, been laid upon all such consciences as it has found in that tabernacle, in which, wherever it has not by priestcraft or lawyercraft been extirpated, that organ of the mind will still be to be found.

* Here follows what is said in a book, intituled, "*Liberal Education*, by *Vicesimus Knox, M.A. late Fellow of St. John's College, Oxford*, in two vols. 10th edition, 1789:" to which is added, "A Letter to .... Lord North," then chancellor.

In Vol I. p. 120, "The following," says he, "are miscellaneous passages from Dr Newton and Mr. Amhurst: .... "To give a just account of the state of the University of Oxford, I must begin where every fresh man begins, with admission and matriculation; for so it happens, that the first thing a young man has to do there, is to prostitute his conscience, and enter himself into perjury at the same time that he enters himself into the university." Whereupon, in the same quotation, follow instances in abundance, out of others that in much greater abundance might have been adduced.

Mr. Knox, for many years master of Tunbridge school, is the person by whom, on this occasion, I consider the statement as made: who the other person was, whose words he here employs, is an article of information which to the present purpose is scarcely worth obtaining:—*Amhurst*, as above, is mentioned as his name: no mention of the page, or so much as of the title of the work. Whatsoever it may have given to that of the honest author, to the conscience of the right honourable minister and chancellor, to whom it was addressed, it does not appear to have given any more disturbance, than it has to that of any past or present, or seems in danger of giving to that of any future successor, not to speak of their respective *Vices*.

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if so indeed it were, that, by religion, such force as that sanction is in possession of is actually employed in the endeavour to deter men from transgression in the shape in question — from transgression in the shape of perjury, — it has now been seen what that force really amounts to: and then would come the question, whether, supposing that sanction really to receive support from the enormously expensive machinery which is seen to be employed in the support of it, or under the notion of giving support to it, whether the value of the support be equal to the value of the expense.

A less grating supposition will surely be, that, in the endeavour to keep men's lips pure from transgression, at least in this particular shape, the force of religious hopes and fears does *not* employ itself: but, upon this supposition, the ceremony, its inutility considered, will be parted with without reluctance: always remembered, that, even by the articles of the Church of England, the use made of it is stated — not as necessary, but simply as allowable.

Section 4.

Recognition of its Inutility by Lords and Commons.

By the House of Commons is exercised, — if, *in appearance*, relation had to the two other component branches of the sovereignty, no more than a *co-equal*, or in some respects even *inferior* — in *effect* and *experience* a universally superintending and thereby *superior*, authority in every department of government. If, in *legislation*, it possesses but one out of three shares, yet, by the exclusive origination of the measures necessary to the giving to the body politic its daily bread, that share is in effect (corruptive influence apart) rendered little less than the whole.

Over the acts, and thereby over the persons, of the possessors of the several powers belonging to the *administrative* department, the person of the monarch alone excepted, it possesses that controul and superiority which is constituted by the direct as well as exclusive right of *prosecution*, and the virtual power of *dismission*; including, to the extent of the suffering by loss of office and its emolument, the power of *punishment*: so likewise over the possessors of the powers belonging to *judicature*, with the exception of the few persons in whose instances the virtual power of dismission requires the concurrence of the House of Lords.

Be this rough outline more or less correct, on the manner more or less fit, in which these several powers are exercised, depends, day by day, not only the well-being, but the very being of the state.

On the correctness and completeness of the *conception* formed in relation to the several matters of fact, on which the acts done in the exercise of these several powers are grounded, and thence on the correctness and completeness of the mass of *evidence*, from which in each instance that conception is deduced, depends, in each instance, the propriety or impropriety, the salutariness or the mischievousness, of the exercise given to those powers.

All this while, — in so far as, concerning what a man thinks it right for him to do, any inference can be drawn from what he does, — of all those several operations, on each of which the life of the body *politic* is no less continually dependent than that of the body *natural* on respiration, not one is there to which, in the opinion of that assembly, any necessary security against deceptions incorrectness or incompleteness, is by this ceremony afforded—any useful service rendered.

Here then comes the inference — dispute it that man, by whom any the faintest colour of reason to combat it with can be found. Either by both these sets of trustees for the rest of the community, their respective trusts have on every occasion been betrayed; — betrayed by the Commons, by their not assuming this power — by the Lords, by their not conceding it; — or, on every occasion, to the purpose of ascertaining facts by evidence, in the opinion of both these authorities, the ceremony of an oath is needless.

The proceeding for which a ground is to be made — will it be said, that, when it is of comparatively inconsiderable importance, then indeed the fitness of the proceeding *does* depend upon the goodness of the ground, but in the case where it is of the highest importance, *not*? This and nothing less must be maintained — maintained by him by whom the justness of the above inference is stated as open to dispute.*

Section 5.

Mischiefs — 1. *Contributing to the Mendacity-Licence granted by Judges.*

In the abridged work on the *Rationale of Evidence*, — in speaking of the securities for trustworthiness there mentioned in the character of true ones, — under the head of punishment, explanation was given of the *mendacity-licence*; — of the mode in which it was and is granted, and, in general terms, of the mode in which the ceremony termed *an oath* was made subservient to that flagitious purpose. On the occasion of judicial testimony, be the mendacity ever so pernicious,

* Question concerning an object to the value of a shilling or a halfpenny — no trial of it without this sacred ceremony. Question, as in the case of the orders in council, between war and peace, between national starvation and life — no such security employed: no decision suspended for want of it. What more need be said? — no thought taken for it.

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punishment (it has there been seen) stands in general confined to the case, in which, as a security against the practice of that vice, this ceremony had, on the occasion of the delivery of the testimony, been applied to it. In this, as in other cases where prevention has been desired, by the application of punishment, the effect of a *prohibition* was and is produced: in this, as in other cases where prevention has been matter of indifference, or production an object of desire, by omission to apply punishment, whether the omission had for its cause design or inadvertency, the effect of a *licence* was and is produced: and, so surely as the omission has design for its cause, or observation of the effects for its accompaniment, so surely is not only the effect of a licence produced, but, in whichsoever of a variety of imaginable forms, the licence itself is in substance granted.*

When, for the purpose of revenue, an occupation or transaction not meant to be pro-

* Of the aggregate mischief of the institution here in question, the judicial abuse, which in the work mentioned in the text has been designated under the appellation of the *mendacity licence*, forms so material a part, that, unless the view there given of it were here inserted, any conception that could hence be formed of it would want much of being an adequate one. As the present tract, though, if room can be found for it, designed to constitute an appendix to the abovementioned work on Evidence, is moreover designed to appear in the form of a separate publication, it has been deemed advisable to reprint in this place that part of the work on Evidence, in which the abuse here in question has been more fully delineated and explained.

It forms the fourth section of the 8th chapter, intituled, OF THE SECURITIES FOR TRUSTWORTHINESS IN EVIDENCE, and is in these words, viz.

§ 4. *Judge and Co.—False Evidence rendered by them dispunishable, where profitable to themselves.—Mendacity licence.*

Thus much as to *propriety*: — for *practice*, learned ingenuity has discovered and pursued a more convenient course.

Under the English, not to speak of other systems of technical procedure, by means of the command, so easily, when indirectly, exercised by *power* over *language*, an expedient was found for rendering mendacity punishable or unpunishable at pleasure. In the person of a party litigant, or a witness, when it was to be rendered *punishable*, the allegation or statement was called *evidence;* and, to mark it as such, a particular *ceremony*—the ceremony of an *oath*—was made to accompany the delivery of it. When it was to be rendered *dispunishable*, it was *not* to be called *evidence:* — it was to be called *pleading* — *pleadings* — anything but *evidence:* — and the *ceremony* was to be carefully kept from touching it.

At this time of day, few tasks would naturally be more difficult, than that of satisfying the English lawyer, that *pleadings* not upon oath — that anything, in a word, which in legal use has been carefully and customarily distinguished from evidence, can with propriety be termed *evidence*. But though, thanks to his ingenuity, so it is that pleadings — all pleadings at least — are not evidence in *name*, yet so it is, that every thing that goes by the name of *pleading* is evidence, in effect. All testimonial *evidence* is *statement* — *narration* — *assertion:* every thing that goes by the name of *pleadings* is so too. Of *evidence*, the use, and sole use, is to command decision: — by *pleadings* decision is commanded, and *that* in cases to a vast extent, and in continual recurrence, and with a degree of *certainty* altogether denied to *evidence*.

To the purpose of imposing on the adverse party the obligation of going on with the suit, the contents of every instrument included under the name of *pleadings*, how replete soever with manifest falsehood, are taken for true, and as such, without the *name*, have the *effect* of *evidence*. This effect (it may be said) is but provisional: but definitively, to the purpose of giving to the suit a termination favourable to the party by whom the instrument is exhibited, — to the purpose of producing a decision — a decision as favourable to him as could be produced by anything to which the name of *evidence* has been left, — to the purpose of producing the selfsame decision, which, by evidence, supposing it believed, would be produced — it *has* the effect — not simply of evidence, but of *conclusive* evidence: — the party who fails to meet the instrument in question, — by some instrument which, at the next step that, on the other side, ought in the appointed course to follow it, — loses his cause.

Of this eventually-conclusive evidence, the power, it may be said, cannot be great, since — by so proper and simple an operation, as that of exhibiting the corresponding counter-instrument, the party, to whose prejudice the conclusion would operate — gets rid of it. Simple enough, yes: but instances are but too abundant, in which the operation, simple as it is, is impracticable — foreknown to be impracticable. To the performance of the operation, money is necessary: and on that side — money being by the other side known not to be forthcoming — what is thereby known is, that the exhibition of the counter-instrument is *not* practicable. It is accordingly because foreknown to be impracticable, that the operation is thus called for: for which purpose, falsehood, the most barefaced falsehood, is admitted to serve — admitted by those judges to whom its quality is no secret: — admitted with exactly the same composure as if it were known to be the strictest truth.

Thus it is, that under favour of the mendacity-licence thus established, every man, who, being to a certain degree opulent, has, or desires to take, for his adversary, a man to a certain degree less opulent, has it in his power, whether on the plaintiff's side, or on the defendant's side, to give, to his juridically-delivered allegations, by what name soever denominated — *pleadings* or any other, — the effect of *evidence*: — the effect, not only of evidence, but of *conclusive* evidence.

And thus it is, that by the forbearance — the astute forbearance — to give, to the security afforded by punishment, the extent necessary to justice, mendacity is generated and cherished, injustice, through misdecision, produced: — the evils opposite to the *direct* ends of justice produced, by means of the evils opposite to the *collateral* ends of justice.

Among lawyers, and more especially among

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hibited is thus clogged by a licence, money, with the effect, though not under the name of *purchase-money*, is exacted for it, and that money is applied to the use of the community at large, through the medium and by the hands of government. In the case of the licence here brought to view under the name of the mendacity-licence — (the judicial or testimonial mendacity-licence) a licence by which, through the medium of wilful falsehood, a man was, and is, allowed and empowered to work injustice to an unlimited amount, the tax being imposed by the authority of the judges, the produce of it was and is divided, though in casual and not distinctly discernible

English lawyers, so commodiously, and thence so universally, is *custom* accepted as an adequate substitute to *reason* — so unprecedented is it for a man to trouble himself with any such thought as, in regard to any of the established torments, out of which his comforts are extracted, what, in point of utility and justice, may have been the ground for the establishing of them — or so much as, whether they have, or ever had, any such ground at all — that, at the first mention, a question to any such effect will be apt to present itself to them, as no less novel, than idle and absurd. But concerning *judgment by default*, and everything that is equivalent to it,[a] — be it in a House of Commons, — be it in a House of Lords, — be it in any other place, — should any such misfortune happen to him, as to feel himself under a necessity of finding something in the character of a reason to give, in answer to the question — why it is that *judgment by default* is made to follow upon default, his reason would be this or nothing, viz. that in this case, on the defaulting side, *want of merits* is inferred; and not only so, but that it is from the allegations contained in the instrument last delivered on the other side — it is from that, and nothing else, that the inference is deduced.

At the same time, that which, be he who he may, is well known to him — or at least, but for his own wilful default, would be known to him — that which he has always in his hands the means of knowing — means beyond comparison more ready than any which are possessed by the vast multitude, who at the instance of his tongue, and by the power of his hand, are so incessantly and remorselessly punished, — punished for not knowing that which it has so diligently and effectually been rendered impossible they should know, is — that, in the case of an average individual, the chances *against* the truth of the conclusion, thus built and acted upon, are many to *one*.

To be assured of this, all that a man has to do on the one side of the account, is to look at the average, or even at the minimum amount of the costs on both sides, which, on each side, a party subjects himself to the eventual burthen of, — or though it were at those on one part only; — on the other side of the account, at the annual amount of what an average individual of the labouring class (beyond all comparison the most numerous class) — or even though it were an average individual of the aggregate of all classes, the very highest not excluded — has for the whole of his possible expenditure. This comparison made, then it is, that any man may see, whether, by forbearance to *go on* with an existing suit, at any stage, on *either* side, — whether, on the *plaintiff's* side, by forbearance to *commence* a suit, — any preponderant probability be afforded, of what is called a *want of merits*.

[a] *Equivalent to it.*] Examples — In common-law practice, *judgment as in case of a nonsuit:* in equity practice, taking of the bill *pro confesso*, in case of what is called *contempt;* for, — when, by the ruin of his fortunes, and consequent inability to pay the appointed price for a chance of justice, a man has been reduced to the lowest pitch of humiliation, — *contempt*, the offspring of *pride*, is imputed to him: and it is for this *pride* that he is punished: — punished, by being excluded from that chance.

Of two all-pervading masses of instances, in which, throughout the whole system of technical judicature, conclusions, having been built, are continually acted upon, — acted upon by men, to whom, one and all, the *premises* on which those conclusions are built, and thence the conclusions themselves, are — or, without their own wilful default, would be — known to be false, this is the first, for the mention of which the occasion has here happened to present itself.

Under the head of *non-observance of formalities*, a failure considered as being, or at least dealt with as if it were, *evidence* — evidence conclusively probative of unfairness on the part of a contract, or spuriousness on the part of an instrument of contract — under this other head, mention of another instance will come to be made in the chapter on *pre-appointed evidence*.

Nullification, — to which belong conjugates and quasi-conjugates much too abundant to be here collected, — *null*, *void*, *bad*, *quash*, *set aside*, and so forth — *nullification* is the name given to the factitious engine of iniquity, by which the sort of effect here spoken of, is in both instances produced. Instruments and operations of judicial *procedure* — *contracts* and *instruments of contract* — whatsoever has been the *subject* to which it has been applied, *lawyer's profit* is what the machinery will be found to have had exclusively for its *object*, *lawyercraft* for its inventor and constructor, iniquity and misery for its *effects*.

By encouragement as well as impunity thus given to mendacity, — if it be on the plaintiff's side, the number of suits is made to receive that addition, which is brought to it by those in which the dishonesty — the *mala fides*, as the phrase is — is on the plaintiff's side: by the like boon bestowed on the defendant's side, the like addition is made to the number of those to which *continuance* is given by dishonesty on the defendant's side.

See more to this purpose under the head of *Oath*.

On all these occasions, partner and accomplice in the fraud on one side of the cause, in the oppression on the other, the judge, as well as his collaborators, extracts emolument out of the mendacity thus produced under the name of *pleadings*, — the mendacious evidence thus suborned is all in writing, — and the mass of writing is a mine of fees.[a]

[a] To quote or refer to the instances in which profit-yielding mendacity is thus generated, would be to quote or refer to the whole contents of the several law-books, in which, under the name of *books of practice*, for the use and benefit of the members of the profession, the course of judicial procedure is delineated.

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proportions, between themselves, their subordinates, and other their confederates, in various situations and of various denominations, partners in the traffic of justice and injustice.

Nothing could be more artful, nothing was ever more successful, than this their scheme of policy: without any of the infamy, they derived all the advantage of encouragement given to the profit-yielding vice: and, by the impenetrable secresy by which it was concealed, the value of the profit, so far from being diminished, was proportionably increased.

To the purpose of this disguise, the ceremony was in an eminent degree serviceable. If, for producing the effect of a licence, no such ceremony being in use, no instrument had been employable but punishment, undisguised punishment,—employable, *viz.* by the direct and manifest forbearance to apply to mendacity, on *one* occasion, that punishment which on *another* occasion, and *that* not presenting any greater demand, was applied to it, — the device might have been too transparent to be hazarded. But when, in the character of an intermediate instrument, the ceremony, with its terrors, was called in, and set to work, its mysteriousness served as a curtain, behind which the eyes of the awe-struck multitude were terrified from any attempt to penetrate.

What was conspicuous enough, and to every eye, was the assistance lent to justice in most of the instances in which this sanction was employed: — for, inefficient as on these occasions it would have been of itself — and, as on every occasion, in which it is without support from shame or punishment it is found to be, — yet, when backed by punishment, as on these occasions care was taken that it should be, it derived from the punishment such support as in each case it was in the nature of the punishment, such as it was, to give. What *was* seen, and by everybody, was, therefore, the assistance that, by this instrument, was lent to justice, in the cases in which it was applied. What was *not* seen by anybody, those excepted whose interest it was not to speak of it, was the debility—the state of prostrate debility — in which the hand of justice was left, in every case in which this necessary armature was not given to it.

Had neither oath nor punishment attached upon any part of the mixed mass of evidence, shame would, in case of falsehood, and with a degree of force proportioned to what was understood to be its degree of mischievousness, have attached upon every such polluted part. But, when the distinction that was made was to such a degree conspicuous, the two combined sanctions (the only two which are under the direct command of government) being to one part of the mass applied in combination, while to the other part neither of them was applied, shame could not in the unmarked part find any sure ground to fix upon. Unless it were the issuing, in express terms, a declaration pronouncing falsehood blameless, neither licence nor so much as approbation could, by these official guardians of public morals, have in any other way been given to this their cherished and richly profitable vice.

Not that even of declarations, little if anything less express and open, examples but too frequent might not be found. A penitent criminal confessing his guilt, the judge urging him to deny it: — contests of this sort may be seen in print, between a falsehood-hating felon and a falsehood-loving judge: and, lest the poison of mendacity should not with sufficient certainty and effect work its way into the public breast, hypocrisy has thus been seen stirring in the honey of humanity to sweeten it.*

* Under the French system of regular procedure, the range of the mendacity-licence was still more extensive than under the English. Those incidental or interlocutory instruments, applications, and other operations, which, under the English system, require, to give them effect, testimony delivered *upon oath* (viz. in the shape of a ready-written *affidavit*) were, under the French system, with little or no exception, made, and performed, and effect given to them *without oath.*

In the 864 small-typed pages of a quarto volume (*Ravaut — Procédure Civile du Palais*) not the least trace of an *affidavit*, or anything that, in respect of *oath* or *punishment*, could have been calculated to answer the purpose, could be discovered.

The consequence was — that, for protracting litigation, lies, so they were but in writing, were, by French, uttered and received for truth with still less reserve, if possible, than by English justice. Still more perhaps than here, confusion was thickened, and litigation lengthened, by diversity of courts and appeals.

The pace of English common law was out-lingered in the Westminster Halls of France. By any such distinction as that between *common law* and *equity*, with different though confederated sets of shops for the sale of them, the understandings of mankind have nowhere been insulted but in England. But, derived as it was from the same Roman source, French *common law*, such was its dilatoriness and predatoriness, might, like the Scottish, be said to be all *equity*. What was worse, even their *criminal* law was in this respect all *equity*. Of the causes reported in the *Causes Célèbres*, the average duration was found to be about *six years*. There, as here, the mass of writing was a gold mine to judges and their creatures.

Linguet (Plaidoyers, vii. 118, Leloir's case) mentions as one of the particularities of that case, that, while, of such part of the costs as went to pay the advocate and the attorney, the amount was no more than 60 livres, that part that went to the judges, being under the names of *épices* and *vacations*, paid to them for *l'arrêt* (viz. the judgment or a copy of it) was more than 400 livres. Under the French edition of Rome-bred procedure, these costs of the *arrêt* corresponded to the costs of the *extraction of the decreet* in the

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Section 6.

Mischief 2 — Weakening in various ways the Efficiency of the Laws.

Various are the occasions on which — various the ways in which — the effect of this ceremony has been to confuse the texture, and enervate the effective force of the whole body of the laws.

Were the force of which it deprives the arm of justice no other force than its own, the mischief, as already intimated, would be scarce worth taking into account. But the performance of this ceremony having been rendered necessary, — in some cases to the application of an adequate lot of punishment in case of the delivery of mendacious testimony — in other, and indeed in most cases, and these in the greater number, to the very attempt to extract or receive the testimony, — hence it is, that throughout its whole field of legal action, by the mere non-application of this *stimulus*, the arm of the law is left in a palsied and inefficient state.

I. In the first place, may be mentioned *exclusion* — the virtual exclusion put by it upon the testimony of a numerous class of men. And what men? Men whose distinguishing characteristic is — that, in their instance a more than ordinary degree of sensibility to the force of the religious sanction, is, by the most unequivocal tokens, put out of dispute. Before these pages are at an end, the absurdity of any such exclusion will, it is hoped, be rendered plain, if any thing can be rendered plain, even in the case of the most flagrant and manifest improbity and untrustworthiness: — *here* the object on which the stigma is made to strike is that class of men which stands most eminently distinguished for trustworthiness.

"*Swear not at all*," says Jesus: at least in as far as to his biographer Matthew credence may in this point be ventured to be given — "Swear not at all," says Jesus: and as if, unless inculcated and enforced by reasons, a precept so simple should escape from remembrance, reasons are subjoined. Professing himself a religionist of the religion of Jesus — an obeyer of the ordinances of Jesus — and of all the ordinances attributed to Jesus — not seeing any ordinance more clear or precise than this, a Quaker refuses to disobey it. For this refusal it is, that, between church and state, matters are so ordered, that, in a case which has afforded no other witness than such as are of this persuasion, justice — criminal justice at least — is deprived of all evidence: licence being thereby granted, to all such crimes as from time to time it shall happen to any man to feel himself disposed to commit (other persons out of the question) upon the bodies, or in the presence, of any number of quakers.

In England, this same religion has been adopted. Adopted? but how? Exactly with those same reservations, with which a bill is at its first introduction adopted in the House of Commons; — viz. with liberty of making amendments: — amendments, omissive, interpolative, substitutive: — amendments of all sorts, and in all cases: — and in all cases to such effect, as the convenience of that class of men, by whose convenience every thing is regulated, was found to require.

In regard to some of its clauses, as where *poverty*, or *equality*, or *non-resistance*, are ordained, the amendment made has been of the *omissive* kind. In the present instance, for the purpose here in question, it has been of the *interpolative* kind: an amendment for giving admission to such oaths as, for purposes such as those above described, it should be found convenient to administer: to administer, amongst other occasions, on the occasion of the delivery of judicial testimony.

What is certain is — that by Jesus, any such exception is not, by any one of his four biographers, represented as having been made. Not made by him? And what then? It is of the number of those, which, though he did not make, he ought to have made.*

2. Not so much as the profession of ren-

Scotch edition. It was among the undisguised endeavours of the professional assistants of the parties to save their clients from judicial depredation in this shape.

Adam Smith (chapter *on the Expense of Justice*) proclaims the purity of the French judges. Pure they were, it seems true enough; but as their brethren in England were pure also: pure, where impurity would have been *dangerous* to the hands that dabbled in it — impure, where it was safe.

On the other hand, of natural procedure, out of the pale of which, what is called *justice* has nowhere in design been any thing better than regulated pillage, but with effects beyond comparison more grievous than those of pillage to the same pecuniary amount, the range was much more extensive *there* than *here*.

Witness the judicatories called *consular courts*.

Of the nuisance called *equity*, a lover of *justice* will be glad to know, that in the American United States she has already in a great degree rid herself, as of so many other English nuisances.

* At a time of pretended toleration, a statute was passed, authorising the admission of a Quaker's testimony without oath: but, lest complication and confusion should not be thick enough, confining the indulgence to cases termed *civil* cases, to the exclusion of cases termed *criminal* cases. Distinct enough, the two words: but between the things themselves, where is the line of distinction to be found? In the nature of the case itself? No: but, as usual under judge-made law, in the treatment which happens to have been bestowed upon it. In a civil case, millions may be included in the stake; in a criminal case, one shilling may be the amount of it: and the same case is either *civil* or *criminal*, or both, according to the form given to the mass of absurd mendacity which a man is forced to allow his lawyers to join in the utterance of, before he is permitted to take his chance for that which is called *justice*.—

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dering justice being to be made, unless the performance of this ceremony be duly accomplished, thereupon comes more complication, more law learning, more doubts, more business.

A Jew's oath, what shall it be? Must the hat be *off* or *on*? and if *on*, what shall in law be deemed and taken to be a hat? And the book — what must it be? and in what language?

Jew or Christian, what is it that shall be kissed? What if, instead of the book, it be the thumb that receives the salute? what if to a book with the Song of Solomon in it, by *astutia* or *laches* of the clerk, those of Rochester be found to have been substituted? With such an instrument, could a man commit perjury?

In Westminster Hall, when a man takes an oath which is said to be administered *by* a judge or certain judges, the judge or judges — must they be there, or may they be not there? Not many years ago, the writer of this was sworn in this way to the truth of a mass of testimony before a learned judge, who was anywhere but there. From beginning to end, suppose it wilful falsehood, was any of it perjury?

The Mahometan — in his system of imposture, does the ceremony find the necessary virtue? does it in the still more extravagant imposture of the Hindoo? In the religion, or the no-religion of the Chinese, is that magic to be found, which in case of profanation draws down with such unerring certainty the ever-obsequious vengeance of the Church-of-England God, by whom all such magic stands prohibited, in terms as plain as it is in the power of language to provide? In this or that false religion, suppose this ceremony to be misperformed — in the Hindoo religion, for example, in which, as exquisitely turned as if it had been in Westminster Hall, the whole mass of ceremonies is a widow's cruise of nullities?

3. As often as a new statute is passed, creative of new offences — and to such novelties not a year but gives birth by dozens, — if to any judicatory other than the regular — if to justices of the peace, for example, one or more, as usual, cognizance of the offence be given, power must by fresh words be given for the performance of this ceremony. Here then may be seen one of the host of causes, from whose hydropic virtue the needless and endless unwieldiness of the body of the law, and the impossibility of knowing, and consequently of doing, that which man is predestinated to be legally plundered and punished for not doing, receives its daily increase.

The empowering formulary—is it omitted? This is what has sometimes happened. Deprived of this necessary support, down tumbles the paper edifice, and with it perish the hundreds or thousands of pounds that have been spent in rearing it.*

4. Exists there a case in which, be the judge who he may, it rests with him, in collecting the information, to perform or not perform the ceremony as he pleases? Here, then, is despotism: here opens a door to safe corruption, — punition or impunity being attached to mendacity, according as it is the one or other that is heard called for by the sinister purpose.

5. Where, for the creation of it, the security, such as it is, requires on every occasion the interposition of human agency, it stands necessarily exposed to all those accidents, as well as to all those abuses, to which the application of human power stands exposed.

Where the oath is the security, for the application of it there must be, as above, either a magistrate, or some other functionary, empowered *quoad hoc* to execute the office of a magistrate. But, unless by a casual charity not worth reckoning upon, the magistrate will not, still less the *quasi* magistrate, join in the ceremony, without his fee. To those whose business with the law is to make it, and if they please to execute it, the fee is nothing. But to those whose business with the law, made or not made, is to obey it, — to the greater part of *them* at least, — the fee is something: half of what a man has to subsist himself and family upon for a day, is always something to him, especially if on that day he have no work.

If, on the part of the justice of peace, or, according to the occasion, the Master Extraordinary in Chancery (for such is the title worn by the country attorney, when decked out in this one red feather from the magistrate's crest) — if, on the part of this regularly commissioned possessor of power over the Almighty, either inclination — (relation being had to the individual by whom, the occasion on which, and the person or persons for whose benefit the testimony is proposed to be delivered) — either inclination or ability be deficient, thereupon comes in another source of vexation, nor that a very limited one. Neither the ordinary justice, nor the extraordinary master, can be any more *obliged* to receive testimony, than, when it is in the *affidavit* shape, the proposed witness can be to deliver it: and if, in the breast of the only

[By 9 Geo. IV. c. 32, § 1, the evidence of Quakers is received on affirmation in criminal cases.—*Ed.*]

* Morning Chronicle, Wednesday, 9th December 1812:—

"House of Lords, 8th Dec. Insolvent debtors. — Lord Ellenborough presented a bill to amend and enlarge the powers of the insolvent act of last session. His lordship stated that, &c. . . . . It was also proposed to give in express terms, to the court constituted by the barristers so appointed, the power of administering an oath, a power which had only been given by implication in the act of last session."

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Extraordinary Master, whose abode is known to be within half a day's journey of the proposed deponent or answer-making defendant, so it be that, in regard to witness or party, it is more blessed to give than to receive — to give vexation than to receive a shilling, — the consequences may more speedily be imagined than expressed.

6. In the times of William the Third, — amongst other driblets of sham reform, a show was made, of substituting, to a certain extent, the purity of natural to the pravity of technical procedure. Under the name of ARBITRATORS, parties were empowered to choose their judges; and, to the decisions pronounced by such judges, upon application made to one of the great shops in Westminster Hall, the force of law was to be sold at an under-price.*

The show was made: — was it any thing — and if anything, how much, better than a show?

In giving jurisdiction by a fresh law to a justice or justices out of sessions, that which to no one man of law, in or out of parliament, could have been unknown, was — that unless for administering oaths to witnesses power were given by an express clause, the law would be without effect. In this act, with all its fine professions, no such power was given: and why not? The answer is already seen. Where was ever that justice of peace, by whom, for the purpose here in question as well as any other, the judge's part might not, as well as by a Daniel, have been acted in this ceremony? Where is the justice of peace's wife by whom it might not be as well acted as by her husband?

Not to speak of clergymen, of whom each parish ought to contain at least one — and to whom for such a function there could not consistently have been a shadow of objection — what attorney is there, who, not being unfit to continue on the roll, would be otherwise than fit for the pronouncing of the words in question, seeing the book kissed, and signing his name? Fit? Yes: — nor less so than, for the application of this same ceremony to testimonial instruments collected under the authority of the chancery court, the same attorney would be, if dubbed for the purpose, (as, on paying his fees, any attorney may be) master extraordinary in chancery, as above?

Here there is another instance — nor that a scantily extensive one — in which this instrument of priestcraft has been made an instrument of deceit, hypocrisy, and mischief, in the hands of lawyercraft. Suppose no such ceremony — suppose, in manner as mentioned below, that, by an all-comprehensive provision, punishment, according to the nature of the mischief, attached, as of course, upon all mendacity, uttered upon a legal occasion, to a legal purpose — in such case, the remedy, if not by other devices defrauded of its pretended object, would, instead of the sham remedy that it is, have been a real one.†

7. By the House of Commons, to whatsoever subject its powers are directed, for obtaining the information, whatsoever it be, on which, in the exercise of those powers, it grounds itself — whatsoever is done, is done without the assistance of this ceremony.

For security against deceptious incorrectness and incompleteness, the means remaining in its hands consist of that *shame*, which in case of detected and exposed mendacity takes place of itself, and the punishment which, under the name of *commitment for contempt*, attaches in case of an order made for that purpose. But as to the shame, be the delinquent who he may, the circle within which are included those by whose judgment delinquency is pronounced, and by that declaration

* At an expense the amount of which is among the secrets that might be worth generally knowing, the award is made *a rule of court:* this having, to the purposes of *execution*, an effect analogous to that of a *judgment*, the delay, vexation, and expense of the proceedings by which the judgment would otherwise have been preceded, are, as to such share of those evils as would have been produced in the court of technical procedure, in so far saved.

† True it is, that at present, — under an official custom, the commencement of which might be matter of curiosity at least, if not of use, in furtherance (as it would naturally be said) of the object of this statute, the three great common-law justice shops in Westminster Hall have been, and continue to be, generous enough (fees being duly paid) to lend out — a partner or a journeyman as it may happen — for the performance of this ceremony; the person, whose testimony is to be delivered to the arbitrators, being taken by an attorney to the court or one of its offices, and there sworn, a judge being present, viz. either in fact or — what, but for the imposture, would be quite as well — in law.

But, — besides that not only the officer must on this occasion have his fee, but the attorney, by whom this witness is ushered to the office and the solemnity conducted, another, and if any, a much greater fee, — how efficient soever the act may thus have been rendered within the limits of the metropolis and its vicinity, what, unless it be once or twice a-year for one or two days, at an assize-town, does it amount to anywhere else? In pretence, it was designed for the benefit of "*merchants:*" — out of London are there no merchants? In pretence it was designed for "*merchants and others* — out of London are there neither *merchants* nor *others?*

Even this driblet of relief finds more perhaps than a counter-balance, in an abuse to which the same act has given, if not birth, increase: the service, I mean, which, at an enormous increase of expense, it renders, in the character of a cloak, to the continuance given to the *forms* of jury trial, in cases where the substance not only *is*, but is acknowledged to be, impossible. Of this abuse an exemplification may be seen in Scotch Reform, *antea*, p. 35.

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punished, is in general comparatively a very narrow one: and, as to the punishment as for contempt, being in its duration limited to the life of the parliament, the consequence is, that from the birth to the death of the assembly, the maximum of punishment is a continually decreasing quantity, till at last being reduced to 0, mendacity, to whatsoever subject applied, obtains in this way too a licence: — a licence at the hands of *time*.

Section 7.

Mischief 3—Bewildering and enslaving the Consciences of Jurymen.

Under the head of *punishment*, in the case of a witness, but principally in the case of a party, who by the admission or extraction of his testimony is in that respect considered and treated on the footing of a witness, it has been seen in what way, by an artful use made of the ceremony of an oath, means were found for producing or repressing mendacity at pleasure.

Thus far, and in these instances, the purpose admitted at least, if it did not absolutely require, that the ceremony should be regarded as binding — should be the object of real and efficient, as well as universal, awe and reverence.

In the instance of another and infinitely narrower class of persons, the like purpose required that it should — this selfsame ceremony should — be considered and treated on the footing of an empty form: — that it should stand divested of all influence.

This was the class of *jurymen*: — the assemblage of twelve unlearned individuals, in whose name, in certain cases, what in English-bred law is done in the way of judicature, is entered as done.

So to order matters, that to one and the same individual, with no other difference than that of the individual occasion, and the station occupied by him on that occasion, one and the same ceremony should be an object of awe and of contempt, might, upon the naked mention of it, seem a problem too difficult for human ingenuity so much as to attempt the solution of. The solution of it will be seen, however, to have been not only attempted but accomplished: always remembered, that in whatever case any real and practical effect has been produced, produced — in appearance by the *ceremony*, — in that case *shame* or *punishment*, or both, may be seen at the back of it: and, on the other hand, that where its influence will be seen to amount to nothing, so it is, that, in this case, the ceremony has found no such extraneous force to give support to it.

The problem all along was to this effect — so to order matters that mendacity should be unrestrictedly practised or punished, — according as the unrestrained practice or the punishment of it should be most subservient to the private interest of the judge and his fellow-labourers; and, to this end, that, in relation to this vital part of morality, in such confusion should men's conceptions on this subject be kept involved, as to take for the standard of right and wrong, the practice of the judge, as determined by the sinister interest of the judge: — and that accordingly, whensoever mendacity were punished by him it should be considered as *immoral*, — whenever left by him unpunished, indifferent, — whenever encouraged or compelled by him, either indifferent or *meritorious*.

To render the confusion the thicker and more irremediable, a conception — and persuasion — that was to be rendered universally prevalent, was, — that the practice of immorality in this shape was, throughout the whole course of judicial procedure, necessary to the purposes of justice: in pursuance of which principle, matters have accordingly been so ordered, that in the instance of that class of judicial officers, (*viz. jurymen*, whose part in the administration of justice is the object of the warmest share of popular favour and attachment,) mendacity should have been rendered an unavoidably incident accompaniment of everything that was done under the sacred name of justice.

At a period, which seems even to have preceded the use made of the ceremony in the character of a security for veracity in the mouth of a witness or a party, — at this early period, a barbarian theology had led the rulers of nations to place their trust in this same ceremony, in the instance of public functionaries in general, in the character of a security for official probity at large: and in particular, in the case of functionaries of the judicial order, including as well those of the professionally learned and permanent class, as those their unlearned, their occasional, and ever-changing assessors.

In the cases as yet mentioned, the expedient, by which the power of licensing falsehood was acquired, consisted in keeping out of the reach of the ceremony, the statements to which it was desired that the licence should extend itself. If over the ceremony itself the power of the man of law could find means to extend itself, insomuch that, at his pleasure, it should be considered as binding or not binding, the punishment of the *religious*, as well as that of the *moral*, sanction being, at his pleasure, felt, or not felt, as attaching in case of violation, — he would, to the extent of such power, possess himself of a species of empire, not inferior to any which even the priest had been able to create for himself.

Fortunately for this enterprise, in the very operation by which alone this branch of au-

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thority was exercised, unthinking barbarism had suffered to be involved a cluster of declarations* which, they being in every case that with respect to the propriety of the decision left any difference of opinion, necessarily untrue, — necessitated, in an equal degree of frequency, the profanation of the ceremony.

Of the only course, by which profanation would be avoidable, torture, terminating in death, having, under cover of the same barbaric darkness, been rendered the inevitable result, — and reliance upon a man's own opinion, — upon the suffrage of his own conscience, — being thus rendered morally impossible; — what, in the situation of juryman, could a simple man do, to save himself from the wrath to come? Conscience, which in such cases catches at every straw, found for the burthen a proffered support in the stronger and well disciplined conscience of the judge. — With this burthen, whatever it was, the learned conscience, as often as suited with convenience, was found ready, as of course, to charge itself: — and thus it was, that, by rendering the sacred ceremony an object of universal and necessary contempt, the man of law acquired, over the decision of juries, a sort and degree of mastery, such as, under any mode of suffrage that would have admitted of an escape from perjury, would never have been attainable.

So many oaths, so many *nets*, in which conscience was perpetually liable to be entangled: but, on so easy a condition as that of a man's pronouncing a short word or two, and thinking nothing about the matter, a learned conscience was always at hand to cut the cords.

The violation of the ceremony, and of the obligation supposed or pretended to have been created by it, having thus been rendered habitual and universal, its impotence in the character of a *check* upon the judge, — its unfitness for anything but a *cloak* to him, — followed of course.

The ceremony being considered as the only security against mendacity, and a licence for the practice of that vice being considered as being effectually, though indirectly, included in every arrangement by which the application of the ceremony was forborne; the habitual profanation of the ceremony having, at the same time, been rendered indispensably necessary to the exercise of the powers of judicature, — in a word, to what was called the administration of justice — no particular instance of the like profanation could, on any consistent ground of reason, find, in the breasts of the violators, any sentiment of repugnance.

But the looser the obligation sat upon them, the more ready, at the call of the living oracle, under any the slightest impulse of sinister interest, in whatever shape, — power, reputation,† or even momentary ease, — would each man be to shake it off.

On condition of earning it by these means, a virtual power of *pardon* has accordingly, in cases to no inconsiderable extent, been in effect imparted to juries: — and lest, in the shape of *power* alone, the encouragement, held out to misdecision in this shape, should not be of itself sufficient, *reputation*, in the shape of the praise of *humanity*, has been occasionally added.‡

Plowing in confusion and perplexity, to prepare the soil for the planting of obsequiousness, — such is the husbandry, which with so brilliant a success has been practised in the field of religion: — such is the husbandry, which with no less indisputable, though less observed success, has been practised in the field of law and judicature.

Section 8.

Mischief 4 — Giving aid and force to the Enterprises of Malefactors.

The application made of the ceremony of an oath, to the purpose of securing observance of mischievous engagements of all kinds, has in all places and all times been too notorious to stand in need of exemplification. In the preceding instances, the hands in which, in the character of an instrument of evil, it has been brought to view, are the hands of government: — hands at any rate in which this or that portion of the powers of government

* *Cluster of declarations,*] consisting of the several virtual declarations made by the several jurymen in and by their respective consents given to the verdict.

The habitual mendacity necessarily involved in the pretended unanimity so uselessly and wantonly necessitated, seems too manifest to require or even admit of proof.

† Hence it is, that, in matters of *libel* for example, where, there not being any *real law*, there cannot be any *real transgression*, and where, there not being any real transgression, conviction never has had, nor, till real law shall have created delinquency, and defined transgression, ever can have, any sufficient warrant, — to so happy a state of ductility has the conscience of the jury-box been moulded, that, unless by some rare and never-to-be-looked-for casualty, prosecution and conviction — would (were it not for the intervening costs, by which trial is rendered an additional punishment) be in effect and virtue undistinguishable.

‡ Example: — Encouragement given to juries to counteract the declared intention of the legislature, and dispense with the capital part of the appointed punishment, by attributing upon their oaths, to *any number* of guineas stolen, a value under that of *two* guineas. In the case of *goods*, this under-valuation is continual: and, even in case of guineas — a case which admits of no possibility of unintentionality in the misstatement — examples of this mode of valuation have not been wanting.

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has been lodged. In the present instance, the hands in which in that same character it remains to be brought to view, are such as, on one account or other — in a word, on any account — come under the denomination of *criminal* ones: the purposes to which it is applied by them being for example of the nature of rebellion, sedition, or mischief, or depredation, perpetrated or attempted, in the two last mentioned cases, on an extensive scale.

When, of the complicated mass of mischief of which this ceremony is productive, the branch here in question is brought to view, an answer is ready: — applied to such purposes, the oath is *null* and *void*. Null and void? Yes: but of this nullity, this invalidity, what is the meaning? This, and this only, viz. that in the mind of any one of a few and still fewer writing men, by none of whom would any such engagement be ever taken, it would not, if taken, be considered as being of the number of those by which he ought to hold himself bound: — in a word, that it ought not to be considered as binding. It ought not? True — but is it not? To the question, what are the actual effects of a thing, a suggestion concerning what ought to be its effects, is — not an answer, but a subterfuge.

"Employ not the abuse as an argument against the use," says a wide extending fallacy, by which much confusion, much deception, much mischief, has been produced. By the *use* of a thing, are meant its good effects; by the *abuse*, its bad effects. What! in taking account of the effects of a thing, are you to omit all the bad ones? — in taking account of profit and loss, are you to omit all the items on one side?

Meantime, the plain truth is — that not only a natural but a preponderant tendency to serve the purpose of abuse is of the essence of the principle. The principle is — that, independently of any demand, which, on the ground of the principle of *utility*, an act presents for punishment, — be the act what it may — good, bad, or indifferent, — fire, stolen as it were from heaven, may in this way be obtained, and employed to punish it. This, or nothing, is what is assumed and contained in the notion of the binding force of an oath.

Not but that, even supposing the nullity of the ceremony universally understood, criminal engagements — engagements for any such criminal purposes as above — might be, and, under the stimulus of the same inducements, might with reason be expected to be, entered into, as in time past. True: but, of the actually binding force, with which those engagements have been wont to be attended, so much, whatsoever it might be, as depended upon, and would have been brought into action by the ceremony, would, by the abolition or universally acknowledged insignificance of the ceremony, be cut off — be kept from applying itself to the ceremony. That hitherto, on the occasion of any such mischief-brewing confederacy, the ceremony has in general been considered as possessed of, and about to operate with, such binding force, is matter of experience, since, on occasions such as those in question it has, in point of fact, been called in and employed.

Of all the drugs that are in use to be employed in the way of medicine, there is not perhaps one, which might not in the way of poison be made to operate with a murderous effect. From hence does any sufficient reason result for the prohibition of the use of any of those drugs? No: — but of any known drug, suppose it ascertained to be no less apt to be employed with effect to the purpose of destroying life than to that of restoring health, — while, with reference to every beneficial purpose to which it is supposed applicable, others, known to be applicable with equal effect, without being equally applicable to its deleterious purposes, are with equal facility obtainable, — so manifest is the conclusion, that it need scarce be mentioned.

A bad effect, or none at all, — such is the only alternative: if it could be proved to be innoxious, it would only be by being proved to be inoperative.

Section 9.

Mischief 5 — Furnishing pretence for Misrule by Abuse of Prerogative.

If, to any persons who, with such a tale in their mouths, should presume to call themselves, as if for distinction's sake, *king's friends*, any credit could be due, not merely the life of a single female, but the internal peace of a great nation, and with it lives, in numbers that defy all limits, have for years stood predestinated to eventual sacrifice by a sort of Jephthah's vow.

What does not belong to the present purpose is the pretencelessness of the application: what does belong to it is the principle: and such is the principle, that under and by virtue of it, with religion on his lips and wickedness in his heart, there exists not that system of tyranny and misrule, which a king might not find or make for himself an equally good warrant for the perpetration of, — make for himself, by an apparent obligation, covering a real licence.

At the pleasure of the wearer, adamant or gossamer, — such are the chains imposed by that sort of law, of which the directive part being composed of vague generalities, the sanctionative part is composed of the ceremony of an oath.

1. That the course taken by government ought to be determined — not by the exigen-

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cies of the existing times, but by the exigencies, to any degree different, of times to any degree remote—

2. That, in matters of law and government, men ought to hold themselves precluded from the use of reason, and from the benefit of experience—

3. That, for the governance of the *living*, the proper heads and hands are—not those of the *living* but those of the *dead*—

4. That, by an idle and universally contemned ceremony (for such it will be seen to be, as often as destitute of support from punishment it is seen to stand alone)—that, by a trick thus flimsy, it ought to be considered as being in the power of improbity or folly, in one disastrous moment, to preclude all imperfection from improvement, all injury from reparation—all abuse from correction—all mischief from remedy—all wickedness from repentance.

Opinions such as these, supposing it possible for them to be sincere—might surely of themselves, without anything more insane, if anything could be more insane, be considered as creating, on the ground of insanity, a necessity for taking the reins of government out of the hands of a monarch upon whom they could be proved.

Co-extensive with that portion, to which, in the field of administration and legislation, it applied by direct words, an opinion of this sort would, if delivered in the character of a deliberate and determined rule of action, be an act of *actual* abdication; and, in relation to the remaining part of the field, consideration had of its utter and irreconcilable incompatibility with good government, ought it not to be considered as having, by necessary inference, virtually the same effect?

Come when it will, is this of the number of those doctrines which are got up for the time? No, verily—but of those which apply to all times or to none.

Section 10.

Misrule, how to perpetuate—Coronation Oaths amended.

In the character in which this instrument has so often been employed, viz. that of an instrument of perpetuation, applied to human ordinances, let but the use of it be admitted,—the instrument employed accordingly, and employed with the effect intended,—what shall it be said is the result? The result is—that, in every shape in which it can happen to the rulers of nations to have, or to suppose themselves to have, in any shape an interest in misrule, in misrule in any shape, perpetuity is secured to it.

As to the mode of operation, nothing can be surer. To this or that word, of those which are in continual use, and which, without the aid of the instrument, are actually and habitually employed to this same purpose,—to any word of this sort—nor is there any scarcity of them—apply the instrument, the problem is accomplished—the thing is done.

Take, for instance, the word *innovation*. On whatsoever occasion they are for the first time respectively carried into effect or proposed, the best measures and the worst have this in common, that they are *new*. So long as any law or established practice in government exists, to which the appellation of *an abuse* can with propriety be applied, the removal of such abuse—in one word, *reform*, viz. in relation to such abuse—must ever be among the measures to which, if to any, the epithet of *good* belongs with indisputable propriety—with a degree of propriety still more out of the reach of dispute than that of any measure, the object of which confines itself to *melioration* or *improvement*—to the introducing in any shape a new and positive good, of the number of those without the aid of which the business of society has hitherto been conducted.

Under its own name, consistently with the established forms of decency, nor consequently with any satisfactory expectation of success, *abuse* cannot, in any shape, be by any person defended; as little can *reform*, at least in so far as it is understood to go no further than the removal of acknowledged abuse, be opposed. But *innovation*—whatsoever may have been the import attached to the word—not only *may* find, but continually does find, opponents—numerous and most strenuous opponents. *Innovation* is a term applicable to anything whatsoever that is new: by it is denoted the introduction of anything that is new: and, as everything whatsoever, and therefore, amongst other things, *reform*, in whatever shape, and to whatever subject and in whatever shape applied, is, on its first being brought on the carpet, *new*; therefore, so it is that whoever can succeed in getting condemnation passed on *innovation*, succeeds thereby in getting condemnation passed on reform: condemnation for everlasting, on reform to whatsoever *abuse* applied: in getting—if not perpetuation—actual perpetuation—at any rate, judgment of perpetuation, passed in favour of abuse, in whatsoever shape it may then be, *or may thereafter come to be*, in existence.*

* It has moreover the effect of conveying, in company with the idea of the principal object, as above, the collateral idea of the judgment of *disapprobation*, as passed upon such object by the person by whom it is employed. This being the case, in diminution of the mischief, suppose it observed, that, on that consideration, it may be supposed to be meant to confine itself in its application, to the case in which the particular

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Add and say — *or may thereafter come to be:* for, erroneous, howsoever at first sight plausible, would be the supposition, that by the exclusion of new measures of government — by the exclusion of new laws — *abuses* would, as well as new *reforms*, be excluded. *Reform* cannot be effected without regulation — *reform* cannot be effected but *by* regulation. *Abuse* needs no regulation for the introduction of it. Not that it is, in its own nature, less capable of being introduced by regulation than reform is: but, forasmuch as things, which cannot be introduced but by regulation, cannot be introduced without being exposed to public observation, while things, that are capable of being introduced without regulation, are thereby, generally and comparatively speaking, capable of being introduced without being exposed to observation, — and since, for example, among the most frequently exemplified, as well as most pernicious shapes, in which abuse is apt to introduce itself, is that which consists in the habit of profitable and unpunished transgression in despite of regulation, — and, forasmuch as the evading of such regulations, by which sinister interest, in any shape, is opposed, is among the naturally constant objects of every individual, whose situation exposes him to the action of such sinister interest, — hence it is, that of any act of public authority, by which exclusion were put upon new measures in the lump, and without any particularized exception or distinction, the effect, in so far as it had any, would be to shut the door for ever against reform in every shape: — leaving it, to abuse in every shape, wide open, — with full liberty to receive increase — in every shape, and to any amount, and at all times.

The above observations premised, here then follows the recipe, for the explanation of which they have been premised: — a recipe or direction, for employing with precision and effect, on the occasion of the vast and complex ceremony termed *a coronation*, the simple ceremony of an oath, in the character of an instrument for the perpetuation of abuse.

Clause the third in the *Coronation Oath:* Stat. 1 W. & M. c. 16, § 3: — "*Archbishop or Bishop.*—Will you, to the utmost of your power, maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do *or shall* appertain unto them, or any of them?"

Amendment proposed: — To the above words, substitute or add the following, viz. *And will you, to the utmost of your power, resist all innovations in religion and government,* or *in church and state?* "*King.* All this I promise to do .... So help me God."

What is fortunate is — that in the above clause the anti-reformist possesses not only a most convenient *receptacle* already fitted up, but a *precedent* of the most sacred texture: — a precedent which, having its manifest origin in this very purpose, has already done whatsoever could then be done, towards the accomplishment of it.

A more ingenious or successful operation of ecclesiastical policy never was performed. Taking advantage of the fears of popish tyranny, excited, in every provident as well as in every protestant bosom, by the incidents of the day, here was an instrument made and provided for the nipping of reform in the bud, in whatsoever quarter in the field of established religion it should ever presume to show itself: an engine serving with equal effect for defending *Protestantism* against *Catholicism*, and *Church-of-Englandism* from reform and improvement, in every imaginable shape: preserving to the right reverend and reverend persons therein mentioned the full benefit, not only of all such profitable abuses, if any, as they had already found means to introduce and establish, but of all such *others*, as by themselves or others, means should thereafter, and hereafter, be found for introducing and establishing, *for* or *to* their benefit, to the end of time.

Applied to government in its largest sense, established religion included, — among the characters of an instrument of perpetuation upon this model, is — that of being in a peculiar and extensive degree adapted to the purpose of giving perpetuity, or, if that be impossible, the utmost possible length of undue continuance, to *bad* systems in contradistinction to *good* ones: and the worse the system, the greater is the need it has of this sort of instrument — the greater the service it is capable of receiving from it.

Applied in particular to religion established by law, it is in a like degree well adapted to the purpose of giving and securing the utmost possible degree of credence — or, if not of *credence*, of silent *submission* and *acquiescence* — to whatsoever is *false* in matters of religion, in contradistinction to whatsoever is *true*.

In the mouth of a *Mollah* or a *Bramin*, the first clause of it, ending with the word *God*, would with as much force and propriety, and without need of amendment, serve for the perpetuation of the religion of *Mahomet* or

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measure in question is of the number of those which, by that person, are or would be disapproved of. But no assertion to this effect being directly and explicitly conveyed, no such obligation, as that of considering it as thus limited, is imposed upon him: and therefore, instead of being the worse, it is but so much the better, adapted to the sinister purpose here in view.

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Bramah, as for any that calls or ever called itself the religion of *Jesus* — "Will you, to the utmost of your power, maintain the laws of God?"

Applied to the tenets of any religion, or of any of the various editions of any religion, it includes in it, moreover, a certificate of the erroneousness and falsity of such tenets. Not that, by this or any other human contrivance, a religion that is true can *itself* be rendered false: not that, by this or any other contrivance, a set of facts, that have actually had place, can be made not to have had place. What it is *not*, is therefore a proof of the falsity of any religion to which it is applied: but what it *is*, is — a proof, nor needs there a more conclusive one — of a want of belief in affirmance of such religion, in the breast of those who concur in the application of it.

What! — if these notions, or pretended notions of yours concerning your religion, be conformable to truth, — if it be the pleasure of the Almighty that the alleged facts on which it rests shall obtain credence, — is it not in the power of the Almighty, without your assistance, to obtain credence for it? You, whoever you are, is it that in yourself you have a power which has been denied to God? But for such assistance as it may please you to give, is the Almighty impotent?

With equal force and efficacy is it adapted (this same first clause) to the purpose of insuring submission to the most absurd conceptions, and to the most pernicious ordinances: to the most pernicious ordinances, and in their support, in case of need, to the most atrocious persecution and tyranny.

This or that ordinance which, by any portion of the king's subjects, is not regarded as of the number of the laws of God, suppose for example that by *the king* it is regarded, or pretended to be regarded, in that light? In the course of any exertion, made by him, in the endeavour to cause these refractory subjects to regard it in that same light, or at any rate to act and speak as if they did, suppose him to experience resistance: resistance, the effect of which — in whatsoever shape, more or less gentle or vigorous, it may happen to it to present itself — shall be to render it, in his judgment, impracticable to produce the effect he aims at. The clause continuing to be understood as it cannot but be understood, what is the practical consequence? That, so long as the effect remains unproduced — no measure is there, be it ever so coercive, that he does not remain still under the obligation of bringing up to the charge. But the stores of his power are not, nor therefore is the virtue of his obligation, exhausted, till all the expedients that ever have been, all that ever can be, employed, by tyranny in all its shapes, by force and fraud combined, have been exhausted: — till, in his legislative character, he has refused his concurrence to all laws tending to the alleviation of the established yoke; — till in his *executive* or *administrative* character, including the virtual initiative part, which, by the hands of his servants, he bears in legislation, he has exhausted all the stores of corruptive influence in the endeavour to overpower and subdue all resistance, and given to the yoke every necessary and practicable increase of pressure.

To considerations of this nature, a peculiar degree of importance is given, by the circumstances of the time:* when from such numerous, and in particular from such high-stationed mouths, the cry is so loud, for one knows not what succedaneous manifestations of hostility, under some such name as *pledges* or *securities*, or GUARDS: — as if there were any real *danger* but from such *guards*.

What! — more oaths? — more subscriptions? — more pretendedly perpetual laws? — and this for the security of the majority against the minority, of the wise against the foolish, of the strong against the weak? — Yes: when you have stocked both Houses with gunpowder, for security against fire.

What you *may* thus perpetuate, is the remembrance of your own folly: what you *can* not and will not perpetuate, should men be weak enough to receive them, are — any such perpetually foolish laws.

SECTION 11.

Mischief 6 — Corrupting the National Morals and Understanding — Oxford University Oaths.

THIN are the partitions by which the moral and intellectual parts of man's frame are divided: scarcely can corruption gain the one, without making its way to the other.

When, in the shape of an immense mass of unperformable engagements, all sanctioned by an oath, the seeds of perjury had been thus thickly sown, it could not be long ere they began yielding such their fruits: fruits more or less bitter to some stomachs, but at any rate conspicuous to all eyes: — a remedy was deemed necessary.

The simple course would have been to abolish the oath: but this would have been contrary to more than one fundamental principle of ecclesiastical polity.

1. One is — that the church is infallible; that is, that a set of professors, who, at the expense of the people, are paid by the sovereign — such of them as do anything — for reading and endeavouring to explain a most important indeed, but not the less obscure and mysterious book, — written at different times, before the use of printing, in different dead languages, — remain for ever, as they

* Written March 1812.

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and their predecessors have been for two hundred and fifty years past, under the happy incapacity of putting in any one instance a wrong sense upon it.*

The influence of this attribute displays itself in both departments of the mind; the understanding and the will: *opinions*, real or pretended, are by it converted, — that is, the words given as containing the expression of them are converted, — into *articles of faith: acts of the will*, of which, when issuing from the pen of acknowledged authority, the expressions become *laws*, are converted into — what certain laws of the Medes and Persians were once pretended to be — *everlasting* and *immutable* laws or ordinances.

Between the immutability that belongs to *articles of faith*, and the immutability that belongs to *laws*, — between the essential characters of these two productions of the one attribute, *infallibility*, — the nature of the *subject-matter* has however produced some difference: *articles of faith* admit neither of *subtraction* nor yet of *addition;* nor consequently of *change* or *substitution*, which is composed of *subtraction* and *addition* put together: *ordinances* are equally unsusceptible of *subtraction*, — but of *addition*, consideration had of the changes and chances to which the affairs of this transitory life are subject, — of *addition*, so it be made but rarely, nor then but with a sparing hand, they are not altogether unsusceptible.

To *herself*, Holy Mother Church—*Sancta-Mater Ecclesia* — younger and revolted sister of the Church of Rome — reserved the superior establishment, the manufactory of articles of faith. It was set up and worked out, — the moulds accordingly all broken up —the necessary assortment being completed, completed for all eternity, so long ago as the year 1562.

To her two daughters — Kind Mother Oxford University, and Kind Mother Cambridge University, —*Alma Mater Academia Oxoniensis, Alma Mater Academia Cantabrigiensis* — (for thus it is that, as often as they talk in Latin, the two goodly fellowships of heads of colleges, when acting in their legislative capacities, respectively style themselves,) she gave up the subordinate establishment — the manufacture of *ordinances:* ordinances, by which the minds of the flower of the English youth were and are to be moulded, — to the *form* at any rate, whatsoever may become of the *substance*, — of orthodox *piety*, of *virtue*, and of what little there may be, that is conducive to such orthodoxy, in *knowledge*.

The above, how pregnant soever in practical consequences, is itself no other than a theoretical principle: another,—itself a practical one, the practical object and fruit of the theoretical one, — is — that the minds of men are by these their rulers to be kept in a state of perpetual *dependence:* of dependence as abject and entire as possible.

Lest the conduct of these possessors of power should experience any inconvenient check in the opinions of the persons subject to it, matters were accordingly, and are to be, so ordered, that all notions of duty, moral as well as religious, religious as well as moral, are to be resolved into one much more simple obligation: the imagined *obligation*, produced by skilful culture out of the *liberty*, of submitting — submitting on all occasions, and without reserve — to the *opinion*, real or pretended, and thence to the *will* of these the ruling and domineering few. Such being the *end*, behold one necessary *means*.

When by the ruling powers such is the species of dominion aimed at, a necessary condition is, — and such accordingly is their interest, — that, on the part of the subject herd, transgression should be as universal and as continual as possible: that thus, finding in their own consciences nothing but condemnation, they should, with an intensity of self-assurance proportioned to the enormity and multiplicity of such their transgressions, behold, in the authority of these their spiritual guides, their only hope — their only prospect of deliverance from the wrath to come.

In every community, — it is of the *obedience* of the men subject to authority, that the *power* of the man possessed of authority is composed: in proportion to the need which each person so subject conceives himself to have of the beneficial exercise of such authority, will be the strictness of that obedience: proportioned to the self-attested wickedness of the sinner, is the magnitude of the demand he has for absolution, in whatsoever shape and from whatsoever hand such deliverance may peradventure come.

Thus it is, that, — the effective power of the confessor being as the multitude and enormity of the sins, real or imagined, of the penitent, — it is in that respect the interest of the confessor, that, in the eyes of the penitent, and thence that in reality, these sins should be as multitudinous as possible; and thence for example it is, that, without exception or distinction, the words *miserable sinners* — *us miserable sinners* — are regularly

* Having operated as a stumbling block when employed by the Church of Rome, it seems to be understood, that in and by the Church of England the term *infallibility* shall not be employed. In practice, however, the thing itself, the attribute so denominated, is not the less assumed (it will be seen) and grounded upon: so that, in the articles of liberty and security, all that is gained to the people by the relinquishment of the term, is the substitution of a circumlocution to the proper appellative, while, by the *grammatical impropriety*, the *political* — the *despotic* — *pretension*, and its supporters, are screened in some measure from the reproach so justly due.

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crammed into their mouths: that so, by a perpetual fever, a perpetual demand for opiates, such as the laboratory of the confessor is furnished with, may be kept up.

Under the Church of Rome, the potion is administered in the *retail* way, — drop by drop, *by hand* as it were, — to each patient by himself: and accordingly it is under that one of the two churches that the subjection is most entire: under the Church of England, under the dominion of its universities, it can only be administered in the *wholesale* way: it can only be administered, as if it were *by steam*, to the whole flock of penitents in the lump. In this mode, to administer it with any chance of effect, required no small degree of art: it has been, or will presently be seen, what that art has been, and with what success it has been practised.

To the accomplishment of the *design* thus indicated, the course thus pointed to being, in the situation in question, if not the *only*, the most promising and directly leading course,— so, of the *existence* of such *design*, the taking of that course, which has thus been seen to have been and to continue to be taken, cannot but be acknowledged to be *evidence:* evidence, the probative force of which is as the degree of pertinacity, wherewith a system necessitating a constant and universal habit of perjury — a system, having certainly for its effect the *generation* rather than the *prevention* of so many of the acts which itself prohibits, — a system for which, considered in these its peculiar features, no other assignable use or object can be found, — is upholden and persevered in: persevered in in sullen silence, without defence because without possibility of defence, in the midst of repeated and persevering remonstrance and reproach.

A self-styled *explanation* of the oath, — bound up indeed in the same volume with the oath, but neither referred to by it, nor so much as, by the operation of the press, placed near to it, — such has been, and such continues to be, the instrument employed to *both* these purposes.

In pursuance of this design, a new principle in morals and legislation, and that a fundamental one, it was found necessary should be advanced: a principle, which, in itself, considered in an intellectual point of view, will be seen to be not less glaringly *absurd* than in effect as well as in design *pernicious:* advanced it required to be, and advanced it was and continues to be accordingly. By any being invested with authority, and acting in pursuance of that authority, — such an one excepted, if such an one there be, whose moral essence is composed of pure malevolence, — *punishment* (it seems now to be pretty generally understood, unless it be where the influence of such contrary doctrine as is about to be mentioned has been prevalent) is never aimed at or regarded in the character of *an end:* — *prevention*, viz. of delinquency, being in every case the end — punishment, *a means* directed to that end: — an instrument, how unwillingly soever, yet, under the spur of necessity, employed notwithstanding, in the character of *a means*.

According to this other, — this *anile*, for such it may be called, anything rather than *maternal*, theory, which it was found necessary for Mother University to set up in opposition to the theory of common sense and common humanity,—according to this theory, punishment is not a *means* leading to prevention, but a co-ordinate *end* placed by the side of it on the same level: so that, when, by a person in authority, — say a parent, say a master, say a legislator,— any act is forbidden to be done, — a punishment being appointed to be inflicted in case of its being done, — in every such case, whether the *act* be *abstained from*, or the *punishment* be *inflicted*, is — in his eyes, and to his wishes — a matter of indifference.

In the world at large — in the case of murder, for example — suppose a legislator taking up the pen and saying, "*Thou shalt not commit murder. Whoso committeth murder shall be hanged.*" To this legislator, according to the Oxford theory, it is matter of indifference how many murders are committed, so long as for every man murdered there is another man hanged.

Suppose in this case—(not that there could be any use in it) — suppose an oath taken by every man that he will never commit murder. By this oath, according to the same theory, would any man's conscience be bound to abstain from committing murder? Not it indeed: all that it could be bound to would be, — in case of his committing murder, and being unfortunate enough to be found out and prosecuted to conviction, — all that the man would stand thus engaged for is — to stand still while the rope is putting about his neck.

As to the *subject* part of the community, — as it was in the beginning, so it is now, — it is in this *explanation*, including the theory on which it grounds itself, that such of them as feel any need of any such remedy find an opiate, such as it is — and that the only one — for whatsoever agitation their conscience may have been subjected to, by the consciousness of continually-repeated perjury. As to the *rulers*, their well-seasoned consciences have needed neither *that* nor any other sedative. From one sin alone could they receive any sensible spasm; — and *that* is — the giving up the article of infallibility, nominal or real, as above mentioned. Sooner than give up *that*, they would all of them promise and vow to say the *Bismillah*, — as some of them, in the midst of their pious abhorrence of popery, do

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still, it should seem,* to say *mass*. As to Laud's *Explanation*, if to them it were anything, so far from an opiate, it would be a caustic: for, by it are specially marked as perjuries those things which (omissions included) they are, all of them, doing every day and all day long: under it they are, all of them, so many — (is it the fault of those who thus *act*, or of those who, that it may be no longer acted, thus *speak* of it?) — are, all of them, so many specially declared and posted *perjurers*.†

What is manifest all this while is — that, to the purpose of *prevention*, — which, except under such tutorage, is everywhere regarded as the sole object of every law considered in the character of a *prohibitive* one, — the effect of all this apparatus, binding and loosing together, is less than nothing. Without any such system of contradictions, the law of the land, — not quite so well obeyed, any more than quite so well in all points deserving to be obeyed, as could be wished, — does however, upon the whole, obtain a tolerably sufficient measure of obedience. But this theocratical code, — with its oath and its explanations, and its perjuries and its equivocations, — and, under the name of principles of legislation, its principles of misrule, — what, with all its ingenuity, and all its piety, has it done, but to expose itself to contempt, and its religion along with it?

Such would be its *inefficiency*, if prevention of mischief, its *pretended*, were its *real* object: but, its real objects being such as have been above explained, sure, too sure it is, — that, with relation to *those* objects, *inefficiency* cannot, with truth and justice, be imputed to it.‡

* *Ex. gr.* at Magdalen College; *viz.* by the oath there taken for the observance of the college statute. See, in *Ayliffe's Hist.* I. 365, as *per Terræ Filius*, I. 15, anno 1726; Dialogue between *Cartwright, Bishop of Chester* and *Hough, then President of the College*, and by *Terræ Filius*, styled "*the present Bishop of Worcester*," anno 1813, does this oath, with the statute in question unabrogated, continue to be administered? Like quære, in regard to the several other colleges.

† Not to speak of the absurdity of this theory upon the face of it, it is not without full notice of the practical consequences of it, that these reverend guardians and instructors of youth have persevered so determinately in the propagation of it. To one of their own number — to that same Principal of Hertford Hall, afterwards Hertford College — it had been an instrument of grievous annoyance. In despite of both sanctions, political and supernatural, — in despite of prohibition and oath together, — a scholar of his had *marooned*: in the 40*s*. penalty, under favour of the explanation of the oath, the fugitive, and the ruling member of a college that received and harboured him, had found, instead of what it professed to be, *a bar*, what it was in effect, *a licence*: and, at the price of these 40*s*., the act of migrating from one of those seats of piety and morality to another, — this act, which, supposing it an offence, is more than ten times as bad an one (so, it will be seen, says the penalty) as that of being taken in the act of fornication without licence, — had received its expiation: — the faith of both sinners, in the power of they know not who, to absolve them from their oaths, having made them whole. Against an abuse thus dangerous to his authority, the reverend disciplinarian, in a lamentation of no fewer than 207 pages, gave vent to his complaints: but, though the root of the mischief lay in the first place in the *oath*, in the next place in the *explanation* by which that same oath is explained away, — so fundamental a doctrine is the doctrine of infallibility, and so incompatible with it would have been the abolition of abuse in any shape however flagrant — that, although, in the abolition of one or other or both of these conflicting institutions, he could not but see his only remedy, yet — so perfectly hopeless was the prospect — that the dose of courage, necessary to enable a man to come forward with a proposal for the application of this only remedy, could never, in all these 207 pages, nor at any time afterwards, be mustered up.

‡ Besides scattered articles in other places, in tit. xv. *De Moribus Conformandis*, to look no further, among the contents of pages from 173 to 179, sections from 2 to 8 inclusive, are found regulations in abundance, from the violation of which no man who ever passed so much as a week — not to say a day — in the university, unless it were in a state of confinement, can, it may safely be said, have been exempt — not to go further back — for these last fifty years.

No. 1, p. 173, § 2. *Offence* prohibited — walking about *at leisure* (or else *in an idle manner*, according to the construction which the interpreter finds himself disposed to put upon the word *otiosi*) in the city or its suburbs.

Penalty — For the first offence, in the case of an undergraduate, reproof or chastisement at the discretion of the vice-chancellor or of the proctors: in the case of a graduate, fine of two shillings to the use of the university.

Justification or *exemption* — Reasonable cause, to be approved as such by the proctors or the vice-chancellor. What is meant for the *time*, at which, to produce the effect of justification, the approbation is to have been bestowed, — viz. before the act, or after it, — *i. e.* whether an *ex post facto* allowance will suffice, or a previous and express licence is necessary to have been obtained, — these are among the doubts to which no solution is afforded, either in this case, or in any of the following ones, in some of which it may be found perhaps not altogether so obvious as in *this* it seems to be.

"Statutum est" (says the text, § 2,) "quòd scholares (præsertim juniores et non graduati) per civitatem, ejusve suburbia, *otiosi* non obambulent; neque in plateis . . . . aut apud oppidanorum seu artificum officinas, stantes aut commorantes . . . . conspiciantur.

"Si quis absque rationabili causâ, à procuratoribus vel vice-cancellario approbandâ, hâc in parte delinquens deprehensus fuerit; si non graduatus fuerit, pro arbitrio vice-cancellarii vel procuratorum corripiatur, vel castigetur. Si graduatus fuerit, 2*s*. universitati mulctetur."

No. 2, § 2. *Offence* prohibited — Being *seen* in the streets, standing or staying at the shops or workshops of town's-people. *Penalty* and *justification*, as in No. 1.

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Section 12.

Mischief 6 continued.—II. *Cambridge Oaths.*

Such, in regard to *oaths* and *perjury*, being the state of things in *one* of the two chief sources and seats of Church-of-England piety, what is it in the *other?*

After an excursion made to the sessions and the assizes, for the purpose of keeping out the sanctified youth from those seats and sources of profane law, as below, the statute returns to the subject, and declares once more, that scholars and graduates of all sorts shall abstain from the *houses* (such is the word now) and shops of the town's-people; viz. in the *day time*, and now it is added, at *night*.—*Penalty* and *justification*, or *exemption*—what will be seen, when that very miscellaneous section, with the rest of its contents, comes under review:—"Statutum est, quòd scholares et graduati cujuscunque generis, à *domibus* et *officinis* oppidanorum, de *die*, et presertim de *nocte*, abstineant."

From 1759 to 1768 certainly, to 1794 probably, in the occupation of the town's-people, amongst shops of other descriptions, were, and it is supposed to this day are, coffee-houses, fruit-shops, not to speak of *inns* and other specially prohibited places, of which further on, and moreover booksellers' shops: the booksellers' shops, it is supposed, not wholly unfrequented; the others thronged.

No. 3, § 3, p. 174, § 3. *Offence* prohibited—Being present at the *sessions* or *assizes*.

Penalty—For the first offence, 10*s.* without distinction of grade or condition: in case of order, by the vice-chancellor or the proctors, to depart, and non-compliance therewith, imprisonment: of the oath, taken, as above, special commemoration made, and also application of it to the purpose of securing—what?—not immediate compliance, viz. departure from the seat of judicature, but the eventual departure to the seat of imprisonment. The offence having, at the time of the enactment or confirmation of this statute, viz. about the year 1634, been, it seems, a very alarming one, the expression *then* given to the alarm has continued to be repeated ever since.

Justification or *exemption*.—Reasonable cause, "to be approved by the Vice-chancellor:"—no other approbation sufficient.

"Statutum est," (says the text, § 3,) "quòd nullus scholaris, cujuscunque conditionis, ad publicos et generales conventus juridicos, vel civitatis vel comitatûs Oxon. (qui *sessiones* aut *assisæ* vocantur) nisi ex causâ rationabili, per vice-cancellarium approbandâ, accedat, vel iisdem interesse præsumat, sub pœnâ 10*s.*, unicuique ibidem deprehenso infligendâ; et incarcerationis, etiam omnibus et singulis per vice-cancellarium vel procuratores inde recedere jussis, nec obtemperantibus; cui adeundi carceris mandato, (quia grassanti incommodo alias commode occurri non potest) omnes et singuli virtute juramenti Universitati præstiti, obedire teneantur.

"Juniores autem, tyrones, et alii non graduati (qui illuc spectatum maxime confluere solent) ibidem deprehensi pro arbitrio vice-cancellarii aut procuratorum, pœnas dare teneantur."

No. 4, p. 174, § 4. *Offence* prohibited—Being *caught*—(for to *fornication* applies, it seems, in this code, the principle which in that of Sparta is said to have been applied in case of *theft*)—being caught in the day-time in a house in which prostitutes are kept. (Quere, if but one prostitute?) "*Precipuè* verò, ab ædibus infames seu suspectas mulieres vel meretrices alentibus, aut recipientibus . . . . abstineant."

Penalty—In the case of an under-graduate, arbitrary; at the discretion of the vice-chancellor or the proctors, by whom the catch has been made: in the case of a graduate, 3*s.* 4*d.* Price 3*s.* 4*d.* a time, *pro quâlibet vice*, as often as he pleases.

Justification or *exemption*—Reasonable cause of entrance or continuance ("nisi rationabilem accessus sui moræve causam reddiderit.")

No. 5, p. 17, § 4. *Offence* prohibited—Being *caught*, as above, with a prostitute in any private chambers:—*in privatis cameris;* viz. in a man's own chambers, or those of any other gownsman.

Penalty and *justification* or *exemption*—as above.

For so natural an amusement, 3*s.* 4*d.* may to some eyes appear rather a high price for a licence: but, when it is considered that it must be a young man's own fault if ever he is called upon to pay it (and then there is the bawdyhouse-keeper to pay in one case, and the girl to pay in every case) it will scarcely, upon due consideration, be pronounced excessive. If prevention were an object, the act really meant to be prevented would, it should seem, here be—not, as might at first view be supposed, *fornication*, but *stinginess* or *negligence:* in either case, the not giving a bedmaker's boy 6*d.* to keep watch: or in the case of the bawdyhouse, choosing one that has not a back-door to it.

"§ 4. *De domibus oppidanorum non frequentandis*, statutum est, quòd scholares et graduati cujuscunque generis, à *domibus* et *officinis* oppidanorum, de die et præsertim de nocte abstineant. *Præcipuè* vero, ab ædibus infames seu suspectas mulieres vel meretrices alentibus, aut recipientibus; quarum consortio scholaribus quibuscunque, sive in *privatis cameris*, sive in ædibus *oppidanorum*, prorsus interdictum est. Et si quis de die in iisdem vel earum aliquâ *deprehensus* fuerit (nisi rationabilem accessûs sui moræve causam reddiderit) si non graduatus sit, pro arbitrio vice-cancellarii, vel procuratorum qui deprehenderint, castigetur. Si vero graduatus fuerit, 3*s.* 4*d.* pro quâlibet vice universitati muletetur."

No. 6, p. 175, § 5. *Offence* prohibited—Being in any *inn*, *cook's-shop*, *tavern*, or other *house*, in which wine or any *other drink*, or tobacco, are ordinarily sold: unless for a necessary and urgent cause, to be approved by the vice-chancellor or the proctors. The offence being in this case so much more serious, the punishment is accordingly so much more severe, than for fornication, or for negligence betrayed in either of the modes above mentioned:—for an under-graduate under the age of 18, *a public whipping:* for one above that age, or a graduate, 6*s.* 8*d.* with a string of ulterior punishments in case of relapse.

"Statutum est quod scholares cujuscunque conditionis a diversoriis, cauponis, œnopoliis, ac domibus quibuscunque intra civitatem vel præcinctum universitatis, in quibus vinum, aut quivis alius potus, aut herba nicotiana sive tobacco ordinarie venditur, abstineant: nisi ex causâ necessariâ et urgenti, per vice-cancellarium aut procuratores approbandâ.—Quodque si quis secus fuerit, octodecim annis minor, nec graduatus, *publicè castigetur:* major autem annis oc-

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The answer is — to the purpose of *sincerity*, widely different: but, as will presently be seen, to the purpose of the main position, viz. that of the *impropriety of the ceremony*, much the same.

At Cambridge, on admission into the state and condition of a member of the University, an oath, to the same effect as above, together with other effects in abundance, is exacted. But, subjoined to the formulary, and on the same paper, is printed *an explanation*, by which, one point excepted, and that an useless one, it is declared to amount to nothing. The engagement thus sanctioned is — what? an engagement to pay *obedience* to these same statutes, all or any of them? No: but only, — in case of disobedience, and prosecution and conviction and judgment accordingly, and execution denounced, — an engagement to *submit* to it, and in so doing, to be *humble*.*

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todecim, vel graduatus, pro primâ et secundâ vice sex solidis et octo denariis universitati mulctetur."

Booksellers' shops, if there be any such places there, are in the houses of town's-people: and so are *coffee-houses*: — if the justification allowed in the case of *bawdyhouses* had been extended to these other lounging-places, would the indulgence have been excessive? Not that any such notion is meant here to be insinuated, as that going to a bawdyhouse, is as bad as going to a bookseller's shop: — this is not the mark aimed at. All that is meant is — that, as in the case of the bawdyhouse, a reasonable cause, approved as such by his reverend superiors, saves a young man harmless, so might it even in the case of the bookseller's shop. Homicide has its *justifications*: and why not the going into a shop, even though it be a bookseller's? — and so in the case of coffee-houses.

No. 7, p. 173, § 7. *Offence* prohibited — Being *found* out of one's college in the evening, after the Christ Church nine-o'clock bell has tolled, viz. in any house or street within the precincts of the university. — *Penalty*, in the case of an under-graduate, arbitrary: in case of a graduate, 40*s*., with eventual imprisonment as for a breach of the peace. — *Justification* or exemption, showing a reasonable cause, to be approved as such by the vice-chancellor *and* the proctors.

Under this code, the penalty for being caught in the *street* being 40*s*., while the penalty for being caught in a *bawdyhouse* is but 3*s*. 4*d*., every prudent young man, who, while he is in the street at a forbidden hour, spies a proctor who he suspects spies *him*, will, if there happen to be a bawdyhouse within reach, run into it — were it only for refuge: and this, judging of offences by punishments, being of the two so much the less serious, cannot but, as such, obtain at least a comparative approbation, on the part of these reverend disciplinarians. Unfortunately, whatever was the intention, the words are here so extremely general, — "*domo quâcunque — every house whatsoever*," — that, if caught, a man would be no better off in the bawdyhouse (supposing it to have struck nine) than in the street. But, if the house has a back-door to it, as every bawdyhouse ought to have, he will *not* be caught, and then everything will be as it should be.

.... "Omnes scholares cujuscunque conditionis .... ante nonam horam (quæ pulsatione .... &c. denunciari solet) ad collegia et aulas proprias se recipiant .... Quodque si quis postea extra collegium proprium vel aulam, in *domo quâcunque* vel *plâtea*, vel alibi intra præcinctum universitatis *repertus* fuerit (nisi causam rationabilem ostenderit per vice-cancellarium et procuratores approbandam) si non graduatus fuerit, pro arbitrio vice-cancellarii vel procuratorum puniatur, vel castigetur pœnâ corporali, si per ætatem congruit, alioqui quadraginta solidis mulctetur: quas mulctas a quibuscunque deprehensis exigere, et ipsarum semissem in fiscum universitatis redigere, tenentur procuratores fide suâ datâ universitati."

No. 8, p. 174, § 8. *Offence* prohibited — 1. Playing at any game at which people play for money; for example, dice and cards: — or with balls, in the courts or gardens of the town's-people. — *Penalty*, in case of an under-graduate, of a fit age for being flogged, flogging accordingly: in case of a graduate or an under-graduate above that age, 6*s*. 8*d*. *Justification* or *exemption*, none.

"Statutum est quod scholares, cujuscunque conditionis, abstineant ab omni lusûs genere, in quo de pecuniâ concertatur; veluti a lusu talorum, alearum, et chartarum pictarum, necnon a lusu globorum, in privatis oppidanorum areis hortisque; nec hujusmodi publicis lusibus per statuta regni prohibitis, intersint; quodque nemo intra universitatem hujusmodi ludis se exercentes excipiat: sub pœna castigationis corporalis non graduatis (quibus per ætatem congruit,) aliis vero et graduatis, 6*s*. et 8*d*."

No. 9, § 2. *Offence* prohibited — Sportsmanship in all its branches. Of the *genus* of offence, the description is — every kind of play or exercise by which, to other persons, danger, injury, or inconvenience, is produced: *species* exemplified, amongst others, hunting wild beasts (such as deer, hares, and rabbits:) among *things*, mentioned as being in this account to be abstained from, are — dogs, ferrets, nets and snares, guns, crossbows, and hawks.

"Item, quod abstineant ab omni genere lusûs vel exercitii, ex quo aliis periculum, injuria, vel incommodum creatur; veluti a venatione ferarum (ut damarum, leporum, et cuniculorum) cum canibus cujuscunque generis, viverris, retibus, aut plagis; necnon ab omni apparatu et gestatione bombardarum, et arcubalistarum; sive etiam accipitrum usu ad aucupium; sub pœnâ castigationis corporalis, &c. .... præter suspendium canum, et forisfacturam .... retium," &c.

Unless in the interval of about forty-four years the state of things in this seat of learning, morality, and piety, has undergone, in the above respects, a total change, very little less than the *quicquid agunt homines*, not only in Laud's time was, but to this day remains, involved in this catalogue of transgressions.

* *Memorandum*, *August* 3, 1804. — Found the printed copy from which what follows is printed, — found it, together with several other copies, — on the pavement of the Senate House at Cambridge, and by leave of the person who showed the house, and in presence of three other persons, took it away with me. J. B.

"*Juramentum à singulis Scholaribus in Matriculatione suâ præstandum.*

"Cancellario Procancellarioque Academiæ

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"*Excerpta è Statutis Acad. Cantabrigiensis, &c.* Cambridge. J. Archdeacon, 1783."

On this occasion surely, if on any, is one of Moses's commandments broken, and the Lord's name taken in vain, — if, by *taking in vain*, be meant, *taken to some bad purposes*, and to no good ones: yet *so* taken in vain, as that, upon the so taking it, no such thing ever takes place as perjury.

Comparing together the state of opinions and religious feelings in these two seats and sources of Church-of-England piety, a few results, — in an historical point of view at least not altogether devoid of interest, — present themselves: —

1. That, at *Cambridge* as well as at *Oxford*, there was a time at which *perjury* was not regarded as a matter of complete indifference.

2. That, at *Cambridge* as well as at *Oxford*, some person or persons was or were found, in whom symptoms of a desire to be exempted from it had manifested themselves.

3. That, by the ruling powers, at *Cambridge* as well as at *Oxford*, in compliance with such desire, measures were taken for the relief of those consciences, in which, on the score in question, symptoms of uneasiness had thus broken out.

4. That, in this view, neither at *Cambridge* any more than at *Oxford*, did it please these reverend potentates to pursue the simple and only proper course, viz. as above, to divest of this extraordinary sanction the comparatively trifling regulations in question, leaving them to the support afforded by those ordinary sanctions, to which the general law of the land, and with it not only the *well-being* but the very *being* of society, is confided.

5. That, at *Cambridge* as well as *Oxford*, the influence of the principle, — above spoken of as being common to the ruling powers, under every modification of the *Christian* religion (not to speak of *others*,) when by law *established*, *viz.* the assumption of infallibility, — openly announced, or necessarily, howsoever covertly implied, — is on this occasion discernible. To the standard of opinion and conduct, matter may, in case of urgent necessity, be *added*, but from it none is ever to be *taken away*.

6. That, for the purpose in question, at *Cambridge*, the course taken was such, that thereafter whatsoever other objections it may remain open to, as above, still in that seat and source of piety, on the score of a violation of the sort of *oath of obedience* in question, no person, living in a state of perjury, has perhaps ever been, or was likely to be, found: — while, in *Oxford*, what seems highly probable, not to say certain, is — that, bating rare and casual exceptions, — as in the case of confinement by sickness, — from that time to the present, no member of the university, by whom the oath, which is administered to all above the age of childhood, has ever been taken, has ever dwelt in that seat and source of piety for two days together, without living in the habitual commission of that sin.

7. That the form of *government* under which, at *Oxford*, perjury was thus rendered universal and perpetual, — to this time, and by the blessing of God to all future time, — was *monarchical: viz.* during the vigorous part of the joint reign of Charles I. and Archbishop Laud: — the form of government, under which, at *Cambridge*, it was abolished as above, was *republican: viz.* that of the *Long Parliament*.

8. That the *religion* under which perjury was thus *established*, was the religion, which, in England, having along with the monarchy been restored, remains still established, viz. *Episcopalian Church-of-Englandism:* — the religion under which, at Cambridge, perjury was *abrogated*, as above, was *presbyterianism:* viz. under the same Long Parliament.

Without incurring the reproach of misrepresentation, the distinction thus brought to view could not have been passed over without notice.

Not that, to the present, or to any other practical purpose, the importance of it presents itself as very considerable. In both seats of piety, so perfectly and universally does it appear to be understood, that, applied to the purpose in question at least, an oath is a mere *matter of form*, *i. e.* that it amounts to nothing, and is of no use, — and that, where it is not punishable, *perjury* is a sort of a thing that no man need put himself to the trouble of being ashamed of; that no instance, it is believed, was ever known, in which, in the circumstance of being exempted from this perjury, a member of the University of Cambridge has been heard or seen, in

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Cantabrigiensis, quatenus jus fasque est, et pro ordine in quo fuerim, quam diu in hac republicâ degam, comitèr obtemperabo; leges, statuta, mores approbatos, et privilegia Cantabrigiensis academiæ (quantum in me est) observabo; pietatis et bonarum literarum progressum, et hujus academiæ statum, honorem, dignitatem, tuebor quoad vivam, meoque suffragio atque consilio rogatus et non rogatus defendam: ita me Deus adjuvet, et Sancta Dei Evangelia.

"*3d Jul.* 1647.

"Placet vobis, ut in majorem in posterum cautelam jurantium et levamen, hæc verba sint annexa juramentis academiæ matriculationis, admissionis, creationis: —

"'Senatus Cantabrigiensis decrevit et declaravit, eos omnes qui monitionibus, correctionibus, mulctis, et pœnis, statutorum, legum, decretorum, ordinationum, injunctionum, et laudabilium consuetudinum hujus academiæ transgressoribus quovis modo incumbentibus, *humiliter se submiserint*, nec esse, nec habendos esse, perjurii reos.'

"Et ut hæc vestra concessio pro statuto habeatur, et infra decem dies in libris procuratorum inscribatur."

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public or *in print* at least, to speak of himself as possessing any advantage.

True it is — that, in both seats of well-paid piety, a man hears indeed, now and then, as of other good things, so of a good thing called by the name of *Christian liberty:* but, under this appellation, whatever else be the meaning of it, no such liberty as the *liberty of not perjuring one's self* appears, in either of them (with the exceptions above brought to view in the case of Oxford,) to have been considered as comprised.

Of a yoke, which sits so light upon the shoulders by which it is borne, it is not natural, that, by the mere force of sympathy, the pressure should be rendered very grievous to others, to which it does not extend itself.

On any such ground, between the children of the one sister and those of the other, have any symptoms either of sympathy, or of heart-burning, ever presented themselves? No, never. If, on the shoulder of the Oxonian, a piece of a feather having been deposited by the wind, it happened to the man of Cambridge to observe it there, what he might or might not do, is — the picking it off, — what it is certain he would not seriously do, is the taking the relief so administered for the subject-matter of boast, or the burthen for the subject-matter either of reproach or commiseration. Instead of the *feather* on the *shoulder*, suppose the consciousness of *perjury* in the *bosom*, the result will be the same.

Piety is one thing: sincerity is another. In both seats, of everything that is right and proper, in all proper places, on all proper occasions, piety continues to be professed: of sincerity, — at least in so far as concerns an aversion to perjury, or to falsehood in a declaration of opinion concerning religion, — in a case where anything is to be got by it, no such aversion seems ever to have been manifested, except by here and there a scabby sheep or two, who for that cause have, upon occasion, been cast out of the flock, being not without reason regarded as not well assorted to the company into which they had been introduced.

In the House of Lords, the bench of bishops, — in some proportion at least — but which, unless it be to a father who has a son to prepare for the reception of the Holy Ghost, seems not to call for any very anxious inquiry,—is divided between the right reverend persons whose piety has had the milk of the *one alma mater*, and those in whose breasts the same useful quality has had the milk of the *other kind mother*, for its source. On any of those occasions on which the influence exercised by a speech is understood to depend in so great a degree upon the personal reputation of the speaker, was any Cambridge-bred ever heard to claim, at the expense of any Oxford-bred prelate, any superiority in the scale of trust-worthiness? A stare, as if Lord Stanhope had just spoken, is the only reply which a question to any such effect could reasonably expect to receive.

The conclusion is — that, in both of the two original *sources* of that piety, the profession of which is so well paid for with public money, as well as in that elevated *reservoir* which has its place in the House of Lords, an oath is universally considered as *mere form:* and that the breach of it, when not understood to expose a man to visible punishment, — the breach of it, termed in one word *perjury*, is regarded as a matter of indifference; — a sort of act of which no man need be ashamed.

The result here spoken of in the character of a mischief, being the corruption infused into the system of public morals, and it being among the positions here maintained, that an oath is a ceremony devoid of use, the contempt thus shown to be entertained for it cannot (it may perhaps be said) consistently with this position, be placed upon the list of mischiefs. True: in so far as the contempt is confined to the ceremony, — to the ceremony considered by itself. But in that ceremony is included an assertion, and by the falsity of that assertion *sincerity* is violated: in the perjury, a sort of insincerity is included: and, for and by every grain of insincerity which enters into the composition of it, every human character is by so much the worse.

As matters stand at present, while, in the character of a security for sincerity, or for good conduct in any other shape, the nothingness of the ceremony is as yet unacknowledged, — while, on the contrary, you will see it so frequently spoken of as the very basis on which society rests, and without which the whole fabric would fall to pieces, — so it is that, by what is regarded as a profanation of the ceremony, and a violation of the obligation supposed to be contracted by it, — contracted by its own single virtue, — indication is given of a *looseness of principle*, as the phrase is, or, in a language somewhat more determinate, of a comparative insensibility to the trangression-preventing influence of the three tutelary sanctions, as hath been elsewhere indicated and explained.*

All this while, to bear a man out in the breach thus made in what is universally, and without any contradiction, spoken of in the character of a most sacred duty, to protect him against reproach — nothing whatever is there but *custom*. Custom? and of what sort? a custom of acting — not in conformity, but in opposition, to the dictates of honest judgment: a custom analogous to a custom of smuggling, or a custom of false coining: a custom of doing that which he, whose

* Introduction to Rationale of Evidence, Ch. VII. § 7.

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custom it is, believes to be wrong, and feels himself unable to find anything to say in justification of.

It imports — (this habit of perjury) — it is produced by, and itself goes on producing and fortifying, the *custom* of regarding the distinctions between right and wrong as depending upon *custom* and nothing else. If the difference between *happiness* and *unhappiness* depended upon custom, so would that between *right* and *wrong*. Unfortunately, this is not the case. By the custom which men of one colour have so long been in, of seizing men of another colour when they could get at them, and keeping them in a state of slavery, what is easy enough to see is, how the sufferings of the men thus dealt with are created: what is not easy to see is, how they are lessened. By the custom which men with one set of religious phrases in their mouths have so long been in, of keeping in a state of humiliation and hopeless degradation men with another set of religious phrases in their mouths, what is easy to see is, how, in the minds of men thus dealt with, irritation is *created:* what is not easy to see is, how it is assuaged.

Not that, either under monarchy or under episcopacy, perjury has ever *eo nomine* been put upon the list of essentials, and the obligation of committing it considered as constituting the matter of a 40th article. At the utmost, the *breaking* of oaths can but be considered as of the number of those exercises which are left unprohibited, in such sort as to be, "*when the magistrate requireth,*" lawful, just as, by article the 39th, the *taking* of them is.

To an eye which should confine its view to the state of things as in this respect it exists at Oxford, it might be apt to appear, that, in the eyes of those fathers of the church, whose seat is in the High Place, the propagation of perjury has been and continues to be an object of importance. Turn, however, to Cambridge, and you will see immediately, either that with the right reverend persons in question this has not been at all an object, or that, if it has, the benefit that would result from it has been considered as outweighed by some inconvenience that would result from the putting of the business at Oxford upon the footing on which it stands at Cambridge: for example, a shake given to so pious and useful a doctrine as the doctrine of *virtual infallibility*, as above.*

Things being as they are, that, with the right reverend persons in question, the propagation of the practice in question either has never been at all an object, or at least has never been an object of preponderant importance, is demonstrated by experience. For, if it had been, matters would, before now, have in such sort ordered themselves, that the Oxford instrument intituled *Explanatio Juramenti* would at Cambridge have been substituted to the decree without a title, by which the Oxford perjuries have been prevented from establishing themselves at Cambridge: — and thus that *uniformity*, which on other occasions has been so dear to *the church* (*i. e.* to governing men,) and for which *the church* has (*i. e.* men governed by them have) been made to pay so dearly, would there also, and on this occasion, have been established.

At present, in this as in so many other instances, the object of importance is — that oaths should be taken: for the accomplishment of it, effectual provision continues accordingly to be made. The question of no importance continues to be — whether, after having been taken, they have been kept or broken: and for this they have accordingly been left to take their chance.

After all, this practice of taking oaths, whatsoever may happen to them when taken, to what is it that in these latter days it is indebted for its continuance? Answer — Not so much to its *absolute* and intrinsic, as to its *relative* importance; relation being had to the grand object of objects — *jargonicè, the peace of the church:* in plain language, the preserving from disturbance the ease of so many high-seated persons, spiritual and temporal, sacred and profane: a blessing which cannot but be subjected to more or less disturbance, as often as the eye of scrutiny is directed to a subject so little able to abide it.†

* Add to this, in the instance of those whose piety has for its source the sincere milk sucked from the breast of *alma mater Oxonia*, the indecorum which would attach upon any such humiliation as that of receiving a sort of correction at the hands of her *younger sister*.

Figure of rhetoric all this, it is true: but, where *church* is concerned, argument is never carried on with any other instruments. In every question concerning the doctrine or discipline of an Established Church, there are certain *postulates* which must be assumed and admitted in the character of *first principles:* principles such, that he who should presume to include them in the subject-matter of inquiry, would be a man not to be argued with: — that a certain number of men, mostly old or middle-aged, or an uncertain portion of that number, compose together at pleasure, at one time, one pre-eminently beautiful, howsoever ancient, as well as pious and in every respect excellent and admirable, woman; who has a family of her own, composed of fathers and sisters and daughters, and whatsoever else is necessary: — at another time, a most spacious, lofty, magnificent, ancient, and venerable building: — at another, a collection of admirable rules and ordinances: — at another time, all human beings whatsoever, who either believe, or are supposed to believe to be true, what this beautiful woman, *i. e.* these old and middle-aged men, say is true, or who are forced to pay them for saying so.

† Inoperative to beneficial purposes, operative to mischievous ones, — inoperative to the purpose of securing testimonial verity for the use of

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So again, on the other hand, in the case of the mischievous applications made of it—for example, on the occasion of the recent associations among the malefactors called *Luddites*. What can *not* be proved is, that in any one of the instances, in which, to the mischievous purpose in question, an oath has been administered by them to one another, it has actually, by its separate influence, been productive of any binding, of any mischievous fidelity-securing, effect: for, independently of any such superstitious tie, other forces acting in that same direction are but too plainly perceptible; *viz.* in case of fidelity, the prospect of success in respect of the accomplishment of the mischievous object, whatever it be, which, by the supposition, is a common one; in the case of defection, the fear of vengeance at the hands of the associates who would thus be deserted and betrayed.

But, at the same time, what *is* proved, is — that, in the opinion of the persons by whom the oath is administered, it *does* promise to operate with the desired effect, upon the persons to whom it is administered: and, in their situation, being, by the tie of common interest, and with the advantage of opportunity, engaged, each of them, to form the truest judgment concerning the texture of each others' minds, and this for the express purpose of determining what sort of force is likely to operate upon them with the greatest effect, thus it is, that, for regarding the instrument in question as likely to operate to the mischievous purpose here in question, the public has the best evidence that the nature of the case admits of.

On the subject of *university oaths*, another observation, that may perhaps present itself in the character of an objection, to the conclusion inferring the inefficiency of the ceremony as a security for testimonial verity, from its inefficiency in the character of a security of habitual obedience to the regulations thus sanctioned, may be thus expressed: Conclusive as is the proof given of the inefficiency of this ceremony to that purpose, in that seat of distinguished piety, among that class of pious men, what does not follow is — that, on the occasion of judicial testimony, even supposing the profane checks to mendacity altogether removed, this religious ceremony would, even in the instance of the same persons, be completely inoperative. Why? Because the *oath against disobedience* is administered once for all; *viz.* on entrance, and not afterwards: whereupon, human weakness considered, nothing is more natural, than that of the impression made by the ceremony, the force, howsoever great at the moment, should in general act more and more faintly at every successive point of time, till sooner or later its action came to be equal to 0.

But, in the case of the *judicial oath*, the time, at which the act which it is employed to influence comes to be performed, follows instantaneously upon the ceremony: instantaneously, and before the impression made by it, whatever it may be, has had time to lose any of its force.

That the observation has a degree of truth in it, can scarcely be denied.

But, on the other hand, as in the case of the statutes in question, occasions for the fulfilment, and thereby for the breach of it, are occurring every day, — under these circumstances, suppose the engagement to be renewed every day, the ceremony to be repeated every day, — exists there in this case any sufficient reason for supposing that, from such an arrangement, the degree of observance would, in the whole body taken together, receive any considerable increase? — Not it indeed. A discovery would soon be made, — and as soon, very generally, not to say universally, received, — that the ceremony was *a matter of form* — *a mere matter of form*. And, be it *oath*, be it *subscription*, be it what it will, — no sooner is it understood that the operation is a matter of *form*, than its efficiency, if it ever had any, is at an end. He who, speaking of an engagement of any kind, terms it *a matter of form*, says in other words — "I do not hold myself bound by it."

In the case of an instrument derived from a supernatural and extraordinary source, — such as is the fear of expected future — but never in this life experienced or observed — punishment, — the impression made by it seems likely to depend for its force in no inconsiderable degree on the *unfrequency* of the

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justice, operative to the purpose of securing fidelity to mischievous engagements,—positions thus contrary, how (it may be asked) can they be reconcilable?

The answer is—that when, with a view to practice, spoken of in the character of a security for testimonial verity, and pronounced inoperative, *that* which, to the making good the position, is not, in that view, necessary, is — that the ceremony should not, in any individual instance, have operated in the direction and with more or less of the effect in that case intended: what is sufficient is — that whatsoever beneficial effect it may, in this character, have been productive of, over and above what might without any inconvenience have been produced without its assistance, would not have been considerable enough to compensate for the evil, produced in various shapes, by the various mischievous applications made of it, as above.

In particular instances individually taken, whether it has or has not had any and what separate operation, is a matter of fact wholly out of the reach of ascertainment. Why? Because this never is applied, but in conjunction with these other forces, *viz.* that of near impending punishment, and that of present shame. The consequence is — that, in these same instances, as it cannot be proved to have had *any* operation, so neither can it be proved to have had *none*.

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application made of it: in the case of an instrument, derived from a natural and ordinary source, — such as is the fear of visible and frequently observed, if not also experienced, punishment, — the force of the impression does not seem, in an equal, if in any, degree, liable to abate.

Section 13.

Practice of receiving Judicial Oaths, its Repugnancy to the Precepts of Jesus.

How palpably repugnant to the precepts of Jesus many of the observances are, to which men are compelled, under the notion of their being enjoined by the religion of Jesus, is what could not easily be conceived by any, who, on such occasions, are not in the habit of using their eyes, nor will be believed by many of those who are.

"Again," (says the account in Matthew, v. 33, the only one of his four biographers by whom any account is given of this precept,) "Again, ye have heard that it hath been said of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths: (33) But I say unto you, Swear not at all: neither by heaven, for . . . &c. (35) Nor by the earth, for . . . &c. neither by Jerusalem: for . . . &c. (36) Neither . . . by thy head, because . . . &c. (37) But let your communication be Yea, yea; Nay, nay: for whatsoever is more than these cometh of evil."

As to what is to be understood to have been here meant by "*old time*," the only passages of the Mosaic law, as reported in the Old Testament, that have any bearing upon the subject (at least as far as the marginal references can be depended upon) are those which are in Exodus (xx. 7,) Leviticus (xix. 12,) Deuteronomy (v. 11.)

In *Exodus* (xx. 7,) the words are these, "Thou shalt not take the name of the Lord in vain: for the Lord will not hold him guiltless that taketh his name in vain." These are the words, in the authentic translation of that portion of the Jewish statute law, which, in the Church-of-England liturgy and other offices, is distinguished by the name of *the ten commandments*, of which it stands third.

Next comes *Leviticus* (xix.) in which the words are these:—(11) "Ye shall not steal, neither *deal falsely*, neither *lie* one to another. (12) And ye shall not *swear by my name falsely*, neither shalt thou *profane* the name of thy God: I am the Lord."

Lastly comes *Deuteronomy*, (v. 11,) in which the words are exactly the same as in Exodus.

Will it be said, that by the words "but shalt *perform* unto the Lord thine oaths," it appears that the sort of oath meant by Jesus to be forbidden was the promissory oath alone, and not the assertory oath?

But—1. In the promissory oath the assertory oath, it has been seen, is included.

2. And, in the above passage in Leviticus, the *assertory*, in which is included the *testimonial* oath, is specially mentioned. "Ye shall not lie one to another — Ye shall not swear by my name falsely, neither shalt thou profane the name of the Lord — Ye shall not swear by my name *falsely*"— says the law of Moses. What says the law of Jesus? Ye shall not swear *falsely*? No: but *Swear not at all.* "Ye shall not swear *at all.*" In this prohibition the words are general, all-comprehensive. If, in respect of judicial occasions or any other occasions, it had been his intention that any exception should be made, would not such intention have been *expressed*?— would not this have been the *occasion* for expressing it? If, of words thus plain and positive, the only obvious import is not to be trusted to, would it not be better that, instead of being in such multitudes distributed, all Testaments, old and new, should be burnt, and the Church-of-England Common Prayer-book, with its articles of faith, and other appendages, distributed instead of them?*

* True it is, that, in the same chapter (v. 17,) "Think not," says Jesus, "that I am come to destroy the law or the prophets: I am not come to destroy, but to fulfil . . . &c." But from this passage, can the oath-and-perjury-compelling powers think to extract a warrant for the exaction or reception of the *assertory* — the *judicial* oath? Can any such notion be maintainable, as that — the assertory, the testimonial, the judicial oath, having been allowed by the Mosaic law—the prohibition of it by Jesus would *pro tanto* be a *destruction* of that law, and therefore, consistently with the explanation thus given by him, cannot be supposed to have been intended?

In the first place,—although true it is that, if the ordinance in question were of the *positive* cast, *commanding* the thing in question to be done, a posterior law, *prohibiting* that same thing from being done, would *pro tanto* be destructive of such prior law, — yet whereas, in the present case, that which by the posterior law in question is *prohibited*, was by the prior law not *commanded* but only *left unprohibited*, — what is *not* true is — that, without special words in the prior law to guard against such prohibition, any such *destruction* would, in common understanding, be understood to be effected.

In the next place, if, by the prohibition of the *assertory* oath or vow, the Mosaic law would have been destroyed, then so was it by the prohibition of the *promissory* oath or vow: — for, that this was in contemplation, and by Jesus meant, if anything was meant, to be included in the prohibition, is put out of doubt by the word "*performance*"— "but shalt perform unto the Lord thine oaths." By these are plainly meant oaths capable of being *performed*, i. e. *vows*: promises — intelligible and serious promises — capable of being performed; not that species of nonsense, which, under the name of *profane* swearing, stands prohibited under 1*s.* and 5*s.* penalties by English statute law.

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3. And accordingly comes the concluding passage of the words of Jesus, in which the word, employed in contradistinction to *swearing*, is "*communication*." Under this word *communication*, is not *assertion* — *statement* — *narrative*, — whichsover be the name given to that application of the faculty of discourse which is most in use; — is it not still more obviously and necessarily included, than any such comparatively rare application as is made by what is called *promise*, *engagement* — deliberate and solemn *engagement*?

The words of James — will *they* be acknowledged as the words of Jesus, or as conformable to and explanatory of the meaning of the words of Jesus? "But above all things, my brethren," says that apostle (v. 12,) "swear not: neither by heaven, neither by the earth, neither by any other oath: but let your yea be yea, and your nay, nay, lest ye fall into condemnation"

On either of these occasions respectively, did Jesus — did James — explain, and say — "on a *judicial* occasion, or for a *judicial* purpose, swear as much as you will, for in such case swearing is not swearing?" On the day when this letter was written by James, had such been the meaning of his master, was it not high time for the disciple to have made known as much?

On this ground stands the system, by which, on pretence of Christianity, Christians in such multitudes, together with all such other persons, to whom it may happen to stand in need of their testimony, are thrust out of the protection of the law — of that branch of it, viz. the *penal*, on which alone men are altogether dependent for whatsoever protection is afforded to them against the most grievous of the injuries to which man's nature is exposed.

All this while, — without any the smallest innovation upon Church-of-Englandism — upon that system, in comparison of which all perceptible happiness and unhappiness is as dust upon the balance — without any such horrible and impracticable temerity (will men believe as much when they see it with their own eyes?) — the practice of administering oaths might be abolished. No: not indeed, if so it were, that, by any one of the thirty-nine articles, the practice is enjoined: but on the contrary, so it is, that, by the only article which has any application to the subject, what is declared is — not the *obligatoriness* — but merely the *lawfulness*, of employing this instrument. The lawfulness? Yes. Lawful then let it be: at any rate, so as the *practice* of employing it be done away, the *doctrine* concerning its lawfulness, taking the word *lawfulness* in a religious sense, may without much mischief remain unquestioned and undisturbed.

If so it really were, that in all testimonial cases the employment of this supposed security were obligatory, what should be said of those, by whom, to so great an extent as has been seen, it has been left unemployed?

Obligatory or unobligatory, useful or unuseful, the practice at present maintained in relation to it will in either case be indefensible.

Section 14.

Succedanea — True Securities substitutible to this false one.

Mendacity is an instrument applicable to the purpose of every wrong. Punished in any one instance, why should it be left unpunished in any other? Punished, in the character of an instrument of delinquency employed in the commission, perpetrated or attempted, of an offence, — in what *proportion* should it be punished but according to the nature of the offence?

Should the prevention of wrongs — should the prevention of offences — be purposely left to accident? Then, to the prevention of wrongs, in the commission of which *mendacity* has been or would be employed as an instrument, the application of punishment should be purposely left, as at present, to accident.

Mendacity is not an uniform offence: it changes its colour according to the nature and substance of the offence to which it is rendered or endeavoured to be rendered subservient. *Mendacity*, employed in drawing down upon an innocent head the destroying sword of justice, is *murder:* murder, encompassed with all its correspondent terror. *Mendacity*, employed in the obtainment of money, is but *depredation*. Yet, while *predatory* mendacity is punished with death, the punishment for the *murderous* mendacity is in comparison but a flea-bite.*

The principle being admitted, the application presents no difficulty. By apt description, performed in and by one all-comprehensive rule or short series of rules, the punishment destined for mendacity might, without difficulty, be attached to it, in every case in which testimony comes to be received for any legal purpose: — in every case, those included, in which, under the existing system, it would be thought fit to employ, for the purpose, the ceremony of an oath.

For any *warning*, that might be thought requisite to be given, — given, *viz.* by the denunciation of the eventual punishment, as at present by the ceremony, — for any such

* When will the language of truth be the language of law and office? When mendacity is punished by the House of Commons, it is punished as a *contempt:* never as anything but a contempt: always as a contempt: — when, so frequently, not *contempt* but *fear* is the cause by which it is known to have been produced.

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warning, *magistracy* — *public functionary* — there needs none. With or without reference to those denunciations, of which so strong and ample a provision is to be found in the sacred books, — a *formulary* being provided by the legislator, for pointing out the punishment to the notice of the person in whose testimony he had an interest, any the humblest individual would not be less competent than the highest-seated magistrate.

Judicature, grounded on testimony, delivered before mutually chosen arbitrators sitting in the seat of *natural* procedure, *might* in this case, and, if not purposely debarred from it, *would* — receive that adoption, which at present is *in effect* refused to it—granted but *in pretence*.

For the eventual punishment to attach, — and, for that purpose, to distinguish legal investigation from simple conversation, — a short formulary might be *pre-appointed*.

Not that at present, under the existing system, any such tutelary caution is provided. For mendacity employed to no worse purpose than fraudulent and unterrific depredation, mendacity is in various cases, and without any such *warning*, punished with death: witness *personation*; witness, in an infinitely diversified set of instances, *forgery*.

In the state of things thus ventured to be proposed, another amendment much wanted might be made with as little difficulty. Falsehood, though not accompanied with that *evil consciousness* which in common speech gives it the epithet of *wilful*, — which in one word gives it the name of *mendacity*, and, if preceded by the ceremony, the name of perjury, — might, if accompanied with *blame* in another shape — in a shape, in which, in the language of the Roman school, *blame*, on the occasion of whatsoever mode of delinquency imputable, receives, and not unaptly, the name of *temerity*, — might be subjected to *punishment*, according to the *degree* of blame.

At present, under the system of oaths and perjuries, mis-statement, from whatsoever *cause* — mis-statement, in what *degree* soever mischievous and blameable — is either perjury or nothing. What is the consequence? That, where it *has not* been accompanied with that *evil consciousness*, but *has* been accompanied with *temerity* — with that heat and passion by which adequate reflection has been excluded, — it is either, under the name of *perjury*, punished on a false ground and to excess, or — what is more common and not less pernicious — left unpunished at least, if not successful and triumphant.

Section 15.

Cause and Origin of the Practice in regard to Oaths.

Thus repugnant to one of the plainest precepts of Jesus, — to that one which may perhaps be stated as being the most pointed and specific of all the precepts of Jesus, — how happens it, it may be asked, that, under a religion calling itself the religion of Jesus, the use made of this ceremony should have been so abundant?

After what has been said, the answer to this question will surely not be thought to lie very deep.

In the case of this as of other institutions, the final cause must be to be looked for, in the particular interests of those by whom they were set on foot.

In so far as, on the occasion of the application made of it, the institution happened to be favourable to the general interest of the community, in so far the operation and effect of it was beneficial: — in so far as — the particular interest being repugnant to the general interest — the general interest was sacrificed to it, the operation and effect of the institution was pernicious.

What has had place in the instance of other institutions, may perhaps have had place in this; — *viz.* that at their origin the balance of their effect has been on the side opposite to that on which it has come to be afterwards: at its origin, — being employed — though in itself an evil — as an instrument, and perhaps a necessary one, to the combating of still greater evils, — it may have been productive of a quantity of good, which, upon the cessation of these greater evils, has come to cease.

On the occasion of the question concerning the *effects*, good and bad, of the use made of this instrument, there are two distinguishable *states*, in which society requires to be considered: *viz.* a barbarous state, and a comparatively civilized state. In the barbarous state, that is, until a certain degree of civilization has taken place, it may probably be impossible to determine, to any tolerable degree of certainty, whether the *good* or the *evil* were predominant: the chances may perhaps be found even in favour of the *good*: — while, in the civilized state, the good effects being altogether or nearly evanescent, the evil will, as above, be found *preponderant* in the balance, if not *alone*.

In the early and barbarous state of the species, anterior consequently to the days of history, — take any number of human beings, connected by no other ties than those of vicinity — could they or could they not have been knit together in the bonds of political society, and thence gifted with a till then unexperienced degree of security, without the aid of this or other kindred instruments? — If not, the preponderance on the side of utility seems to be out of the reach of dispute.

Among the ancient Greeks, great and various was the use made of oaths: among the

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Athenians, more regard was supposed to be paid to them than in other parts of Greece. By Theseus, the scattered population of Attica was, for the first time, brought to that degree of union, and into those habits of submission, by which political power and regular government are composed. In the production of this effect, the instrument in question would naturally be employed. Could the effect have been at all, or equally well, produced without it?

In the hands of the *priest*, supernatural hopes and fears have sometimes been employed, on the formation of society, in bridling and leading the passions of the multitude — sometimes, in a society already formed under the *military leader*, in the bridling of *his* despotism.

Suppose a case, in which, by the direction given to the *force* of the community, the peace and welfare of the community would, but for some such principle of restraint, be destroyed, — in such case, let any such principle present itself and come into action, here — although the nature of it be such as to rank it under the denomination of *fraud*, *deceit*, *imposture* — the preservation of the community may, in this restraining principle, how sinister soever in its nature, find its cause.

Suppose an infant in the cradle, — and a madman, with a sword in his hand, about to destroy it: if, by any representation, though it be false, the hand of the madman can be staid, — as for instance, that an angel with a flaming sword is about to smite the madman, — here the mischief, which in ill-directed *force* would have found its efficient *cause*, finds in *fraud* its *preventive*.

Next to the evils of anarchy, are the evils of despotism. Political society once formed, despotism is the predominant disease, to the attacks of which it remains continually exposed. Despotism or misrule has place, in so far as the force of the whole is, for the benefit of *the one* or *the few*, employed in a manner mischievous to *the many*.

If *fraud* could never be employed but to the promotion of *happiness*, fraud would not be *vice* but *virtue*.

In its own nature, fraud is equally capable of being employed on the side of force — of despotic force, — as an instrument in the hands of force, — or on a side opposed to it. Employed by force, or on the same side, it is an instrument of evil. But if so employed, — employed in such direction and manner, as to oppose, with more or less effect, the mischief that would otherwise be done by force, — in a word, to serve as a check to misapplied force, — in this way it may be an instrument of good.

In the society in question — in the hands in question, the effect of *military* force unchecked would be (let it be supposed) a barbarous tyranny and lawless despotism. In such a state of things, imposture and superstition — on the part of a priesthood imposture, on the part of the people that superstition on which imposture must always depend for its success — may, if evils, be necessary evils: necessary evils, and, with reference to the disease, remedies; with reference to the impending calamity, blessings.

Take the case of Jephthah. In the sacred history, the collection of facts actually reported is not ample enough for the present purpose. But, for the purpose of argument, they afford a ground ample enough to serve as a basis, upon which, for the purpose of argument, suppositions may be applied.

The facts are — that being commander-in-chief of the army of the Jews who were at war with the Ammonites, he vowed a vow — that, in case of his coming off victorious, he would, in the way of sacrifice, put to death the first living object that should present itself to him on his first visit to his own home. That first object was his only daughter, and accordingly put to death she was.*

Let this, then, be the supposition. Jephthah was the military leader: in that quality, his power was exercised in a manner dangerous to public liberty. In the influence of the priesthood he beheld a rival power: in that power, his own power felt a check, and that a salutary one. The form and ceremony of an oath had all along been an instrument in their hands: on the observation he had made of the efficiency of it on other occasions, was grounded the application he thought fit to make of it in this. In the utterance given to this his oath, what he had in view thus eventually to deal with, was neither more nor less than the first that should happen to present itself, of the animals ordinarily employed on the occasion of sacrifice: for, though in the practice of employing human creatures on this occasion for victims, there was not to the people over whom he presided anything new or even very strange, — and though their common ancestor Isaac would by his father have been thus dealt with, and the whole race thus extinguished; yet so it was, that no such thing was in his thoughts: least of all had he any such intention as that, of all human beings, his own daughter, his only child, should be thus dealt with. Unfortunately for the father and the daughter, such was the looseness of the

* To certain divines, this anecdote has not been an acceptable one: the sort of ingenuity, which has applied itself to so many other reported facts and doctrines, has accordingly applied itself to this incident: endeavours have been employed to explain it away. But if in this part the sacred volume is not clear enough to be depended upon, neither can it be in any other: instead of a guidance, the whole of it is but a snare. He "*did with her according to his vow;*" viz. "*offer*" her "*up for a burnt-offering.*"

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expression employed, or at least said to have been employed by him, in the utterance of the *oath* or *vow*, that human beings were not excluded by it.

When the time came for fulfilment, his endeavours were of course applied to the causing that sense to be put upon the oath, by which the dictates of humanity would have been conformed to, and his own affliction spared. But, in an incident thus tragical and impressive, the priesthood beheld an opportunity too favourable to be suffered to pass unimproved: an opportunity of giving the utmost possible degree of force and efficiency to an instrument the management of which was in their hands.

The power thus possessed by them, and employed, was it, or was it not, with reference to the aggregate interest of the community in question — the Jewish nation at the time in question — a beneficial one?

For a categorical answer to this question, no sufficient data are to be found.

Of a hypothetical answer, the difficulty is not equally great.

The time was a time of war — a time during which, the earlier and less experienced the state of society is, the less distinctly does the authority of a commander-in-chief differ from a despotism. In this state of things, the authority of Jephthah, did it stand in need of a check? The sort of check which the priesthood were able and disposed to apply, was it upon the whole a salutary one? Both questions determined in the affirmative, the price paid for the keeping of this check in order and repair — that price, great as it was, was not perhaps too great. One individual — the father — afflicted: another individual — the daughter — sent out of the reach of affliction; — what are these evils, in comparison of those of a course of unbridled and tyrannically exercised despotism, or of civil war, its desperate and perhaps still more afflictive remedy?

Thus much for Jephthah, and for the application made of the ceremony in his case. Upon the whole, whatsoever it might have been in times thus remote and different from the present, for a long time past its effects may surely, without any considerable error, be set down as altogether on the side of evil.

To the purpose of being employed as a security against transgression in any shape, and in the shape of mendacity in particular, it is — for so it has above been shown to be — altogether needless.

Its effects, then, are purely on the side of evil. Of evil it is, as hath been already seen, an instrument, in a variety of ways: and it is — if not in a direct way, in the evil of which it has been productive, at least in an indirect way, in the good which the ruling few have contrived to extract out of that evil — that the use made of this instrument has found its efficient or final cause, and the upholders and employers of it their motive for thus upholding and employing it.

In many cases, in the supposition of the event is involved that of the antecedence of its opposite. Relaxation supposes restriction: condescension supposes pride.

Prohibition forms the necessary antecedent to, and ground of, *licence:* and when, to profitable prohibition, profitable licence is added, the produce of misrule is doubled.

There are two modes of culture in which the produce of licence may be reaped: — the *general* and the *particular* — the *wholesale* and the *retail* mode.

As to the *wholesale* mode, in its application to *mendacity*, its variations have been already shown, viz. *omission* and *explanation:* forbearing to apply the security to this or that class of cases, and explaining it away when applied.

The *special* or *particular* mode consists in the granting of *special licences* under the name of *dispensations:* — granting them avowedly, not covertly and indirectly, as in those other cases.

The use derived, in this shape, from the system of oaths and mendacity-licences, or perfidy-licences, by the Church of Rome, especially in times antecedent to that successful revolt against its authority which has obtained the name of *the Reformation*, is sufficiently notorious. By the ceremony of an oath, obligation applicable to any purpose was created: by a dispensation granted by the head of the church, an obligation thus contracted was, for the benefit of any person to whom on any terms it pleased the holy father to concede the indulgence, done away.

It was on the occasion of the *dispensation* more particularly, that the power of the spiritual ruler was most immediately profitable and most conspicuous. In the creation of the *obligation*, the tying of the knot was the operation of a pre-arranged *machinery:* the part taken in the operation by the manager, consisted in nothing more than watching over it, keeping it in order, and keeping it clear of obstructions.

The *dissolution* of the obligation — *the dispensation* — was a work that could not be performed but as it were *by hand:* on no occasion could it be performed, unless, on that same occasion, if not the *mind*, the *hand* at least of the manager were employed in the execution of it.

At the time of the Reformation, when men's eyes had begun to open themselves, this power of dispensation became too flagrantly mischievous to be retained by any priesthood that had revolted from that of Rome. The days were now over, when, by *the power of the keys*, treaties might be made and dissolved — kingdoms given and taken back — war kindled — and peace sold.

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By the Church-of-England priesthood it was accordingly, with whatsoever reluctance, along with so many other of the powers of the Romish priesthood, given up. By Laud, as the crown by Cromwell, the cardinal's hat was refused. The power of *dispensation in the gross* — the power of *explanation* was all that was by *Laud's* power retained; retained accordingly it was, and in what manner retained and employed, has been seen above.

In time past, and thence in time present — the cause, *final* or *efficient*, of whatsoever is at any time found established, — be it beneficial, be it pernicious, to the *subject many*, — will always be to be found in the particular interest, real or supposed, of the *ruling few*.

Of the institution here in question, at the time of its creation, the effects may — upon the balance, as hath been seen — have been either good or bad, — it is scarce possible to say which. But, those times having been long since passed, the question *now* is — not whether it shall be *set on foot*, but whether it shall be *preserved:* the use *now* made of it — the support *still* given to it — these are the subjects which call for consideration in this our time.

APPENDIX.

I. *Among the Rulers of the University of Oxford, Perjury universal and constant, as declared in and by an Explanation, given by themselves, in their own Statutes — its Jesuitical style.*

IN page 212, in speaking of the rulers of the University of Oxford, mention being made of a document, in and by which the guilt of perjury is in an especial manner declared to attach, upon every person who shall comport himself in the manner therein described; — the same being a manner, in which, to his own knowledge and in the sight of the whole population of that city and its university, every such person does continually comport himself; — an extract is thereupon announced, as intended to be here subjoined, for the purpose of bringing to view the contents of that document, in so far as material to the present purpose. In the original, the following are the terms of it: annexed to it is a translation, in the penning of which, *polish* being considered as *falsification*, the most scrupulous fidelity has been observed. Misrepresentation *pro tanto* would have been the result, if, anywhere, in place of that which *is*, anything, of which it were supposed that *it might better have been*, had been substituted.

N.B. Of this document a copy is contained in every edition of that extract from the body of the University Statutes which is put into the hands of every member at his entrance.

ΕΠΙΝΟΜΙΣ,

Seu Explanatio Juramenti quod de Observandis Statutis Universitatis a singulis præstari solet: quatenus, scilicet, seu quousque obligare jurantes censendum sit.

Quoniam aliis restrictior et morosior, aliis contra, laxior et discinctior est *Conscientia;* illi levissimos quosque lapsus suos calumniari nati sunt, et sese non sæpius immorigeros, quam perjuros esse arbitrantur; hi quoscunque legum nexus, *jurisjurandi religionem*, conscientiæ laqueos, strophis suis eludere satagunt: et ipsi sibi palpum obtrudunt: non abs re fore visum est explicare, quatenus seu quousque *jurisjurandi, de Statutis Universitatis* observandis præstiti, religione teneri seu obligari singulos censendum sit; in eoque tale temperamentum sequi, ne, vel durius interpretando, illis crucem figere; vel benignius, his fibulam laxare videamur.

APPENDIX TO THE LAWS,

Or Explanation of the Oath, which concerning the Observance of the University Statutes is by each person wont to be taken: how far, to wit, or to what extent, it is to be regarded as obligatory on the swearers.

Forasmuch as in some men *Conscience* is more strict and morose, in others more lax and loosely girded; the former are born to calumniate every the slightest of their own transgressions, and regard themselves as not more unfrequently unobsequious than perjured; the latter strive by their quibbles to elude all legal ties whatsoever, the religion of an oath, the nets of conscience, and themselves put a cheat upon themselves: it seemed to be not beside the purpose to explain to what length or how far each person ought to be considered as holden or bound by the religion of the *oath*, taken, touching the observance of the *Statutes of the University;* and therein to follow such a temperament, that, neither by too hardly interpreting it, we may appear to fasten a cross upon the one; nor by too benignly, to unbutton a button for the other.

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Qua in re, hoc imprimis attendendum est; verbis statutorum, in quæ jurejurando quis adigitur, sensum genuinum, ut et obligationi sive vinculo *juramenti*, modum ac mensuram præstitui seu prescribi a mente et intentione, non præstantis, sed exigentis juramentum; scilicet ipsius *legislatoris*. Neque enim si quis inter jurandum, verbis, in quæ jurejurando adigitur, sensum affingat alienum ab eo, quem *legislatori* propositum fuisse, ipsi juranti persuasum, aliasve verisimile est (hoc est, hujusmodi sensum qui desidiæ vel socordiæ faveat, quive *disciplinæ Academicæ* aut morum honestati repugnet) eo ipso *ἐπιορκεῖν* illum, aut statutis vel jurisjurandi religioni satisfacere putandum est; nedum jurisjurandi religione exolutum ut putet se quis, si ad jurandum animum afferat, non obligandi seipsum, sed in nudo verborum cortice sistendi: neque *poeticum* illud *ἐπιορκίας* remedium, seu verius colludium — *Lingua juravi, mentem injuratam gero*, — homini Christiano satisfacere aut potest, aut debet, eo ipso a perjurii crimine excussatum reputare se ut debeat. Quoniam igitur mensura obligationis, seu vinculi juramenti, ab *intentione legislatoris* præcipue pendet, operæ pretium utique fuerit, singulos mentem ac intentionem *legislatoris* perspectam et exploratam habere; qualis scilicet qualiumque statutorum transgressio, juratos ad omnia statuta promiscuè observanda perjurio involvat.

Intenditur igitur perjurio se obligare,

Primò, delinquentes...&c.
Secundò, delinquentes...&c.
Tertiò, qui...&c.

Quoad alia vero delicta; si statutorum pœnarumve *contemptus*, et crassa obstinataque negligentia abfuerit, delinquentes, si pœnis per statuta sancitis, aliasve arbitrariis se submiserint, *jurisjurandi religionem* temerasse minimè censendi sunt. *Magistratibus* denique, prout major eis debetur reverentia, quàm ut pœnis passim intentatis coerceri ipsos et in ordinem cogi par sit, ita major *conscientiæ obligatio* incumbit; utpote qui non solum ea quæ sui muneris sunt fideliter *administrare;* verùm etiam, ut alii omnes suis officiis fungantur, sedulò curare tenentur. Neque tamen eos, ubicunque officiis suis defuerint, perjurio protenus se obligare intenditur. Verùm quoniam *ipsorum fidei* statutorum custodia et tutela concredita est, si (quod absit) per negligentiam aut socordiam suam statuta quæcunque inusu ac desuetudine exolescere,

Wherein this is in the first place to be attended to; that by the words of those statutes, in which any one is made to take an oath, the genuine sense, as also the mode and measure of and to the obligation or tie of the *oath*, is applied or prescribed by the mind and intention, not of him by whom the oath is taken, but of him by whom it is exacted; to wit, of the *legislator* himself. For neither if any one in swearing, affixeth to the words in which he is made to swear, a sense foreign to that of which he the swearer is persuaded, or on other grounds it is probable that it was that which was intended by the legislator (that is to say, such a sense as is favourable to indolence or indifference, or repugnant to academic discipline or moral rectitude,) is it to be thought that he swears rightly, or satisfies the statutes or the religion of an oath; nor yet let any one think himself released from the religious obligation of an oath, if to the act of swearing he brings the intention, not of binding himself, but of stopping at the bare bark of the words: for that *poetic* remedy, or rather shuffleboard to wrong-swearing — *Sworn is my tongue, but unsworn is my mind* — neither can nor ought to satisfy a Christian man, in such sort that he ought to repute himself thereby excused from the crime of perjury. Forasmuch, therefore, as the measure of the obligation, or tie of an oath, depends chiefly on the intention of the *legislator*, it would verily be worth the labour that all persons should have held the mind and intention of the *legislator* well seen through and explored; to wit, of what sort, and of what sort of statutes, the transgression involves in perjury those who are sworn to the promiscuous observance of all the statutes.

Accordingly, what is understood is — that those men bind themselves in perjury,

First, who...&c.
Secondly, who...&c.
Thirdly, who...&c.

But as to other transgressions; if *contempt* of statutes and punishments, and gross and obstinate negligence, are out of the case, delinquents, if they shall have submitted themselves to the punishments appointed by the statutes, or otherwise to such as are arbitrary, are by no means to be deemed to have violated the *religion of an oath*. Lastly, on *magistrates*, according as to them greater reverence is due, than that it should be right that they should be coerced and kept in order by such punishments as are all along threatened; so is a greater obligation of conscience incumbent; to wit, as being they who are bound not only faithfully to *administer* those things which belong to their functions; but also diligently to take care that all others do perform their respective duties. Nor yet is it understood, that they, as often as they shall

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et tacite quasi abrogari patiantur, ipsos etiam fidei violatæ ac *perjurii* teneri decernimus.

have been wanting to their duties, do altogether bind themselves in perjury. But forasmuch as *to their fidelity* is intrusted the keeping and guardianship of the statutes, if (far be it from them!) they suffer through their own negligence or indifference any statutes whatsoever to be rendered obsolete by non-use or desuetude, and tacitly as it were to be abrogated, them also do we declare to be bound in the bonds of violated faith and *perjury*.

These "*magistratus*" — these perjurers in grain — these *ipso facto* convicted and thus placarded perjurers, — who are they? — The reverend the *vice-chancellor* — the reverend the *heads of houses* — the reverend and non-reverend, but for the most part reverend, *masters of arts*, and other the graduates of higher degrees, being members of the house of *congregation* and of the house of *convocation* respectively: — for of these is the *legislative* body composed. The reverend the *vice-chancellor* — the reverend the *proctors* and *pro-proctors*, all for the time being — yea, and within the precincts, logical and geographical, of their respective jurisdictions, the reverend the *heads of houses*, with their respective local subordinates: — for of these is the *executive* body composed.

Quære as to the noble the *chancellor*, and the noble the *high steward*? Upon their respective *installations*, or whatsoever else be the term, — by them respectively is not some such oath taken? — for are not they too "*magistratus*?"

On the occasion of the Catholic question, an apprehension, lest, in the breasts of some, or many, or all of the religionists of that persuasion, the ceremony of an oath should not always operate with sufficient power — lest in the person of the Pope, notwithstanding their protestations to the contrary, they should upon occasion seek and find a power, willing, and in their opinion able, to exempt them from the obligation of it; — an apprehension to some such effect was, on the part of many if not all these reverend persons, among the reasons assigned for the wish to see, now and for ever, or thereabouts, still withholden from between a fourth and a fifth part of the population of the two islands, the common rights of subjects. The obligation of an oath to be done away at pleasure by an old priest, in or out of prison, upon the continent! as if in the bosom of every one of these reverend persons, by whom the sincere milk of the word has been sucked from the breast of Holy Mother, there sat not, in the character of a perpetual Pope, with a *sponge* in his hand, the image of archbishop and university-legislator *Laud*, constantly sitting and constantly at work, watching each perjury as it peeped out, and passing over it, in the manner that has been seen, the sponge of *dispensation*, the instant it came to view.

II. *The Manufacture of Perjury persevered in, and the produce repeatedly augmented, — with open eyes, and in spite of remonstrances.*

In pages 211 and 212, the determination to persevere in a course of universal and continual perjury, and the habit of enduring the reproach of it without flinching, rather than acknowledge, on the part of this eldest daughter of Holy Mother Church, the possibility of error, are mentioned as among the *arcana imperii*, inviolably observed in and by that closest of aristocracies — the government of the University of Oxford. If of so undeniable a proposition any further proof be requisite, it may be viewed in abundance in the course pursued by that government in the field of legislation for these last fifty or sixty years. Revision, not unfrequent: — revision of this very title, samples of which have here been brought to view: — Revision, but with what effect? with what view? Never with any such effect or view as that of taking anything from the number of their perjuries; not unfrequently with the *effect* at least of adding to it.

At the time of *matriculation* — such is the technical term by which admission into the body of the university is there designated — under the title of *Parecbolæ sive Excerpta è Corpore Statutorum Universitatis Oxoniensis, in usum Juventutis Academicæ*, an abstract of the University Statutes, containing such of them as it is thought fit that a person who is not a member of the governing body should be acquainted with, is put into his hands. It forms a well-filled 12mo volume: containing in the edition of 1756, 254; in the edition of 1794 (put into my hands within this seven months as the latest edition,) 261 pages.

In Title XV. *De moribus conformandis*, (being the title from which extracts are here given, as above,) in the edition of 1756 the number of sections is 14; in the edition of 1794, 16.

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Whence comes this variance? The case is this: Between the date of the former edition and that of the latter, two statutes — of the number of those which it was thought fit to make known to the individuals whose conduct was to be governed, and whose fate was to be determined by them — two universally promulgated, besides seven or eight secret or partially promulgated statutes, of which presently — had been passed.

In the edition of 1794, between § 5, *De anopoliis, &c.*, and § 6, *De nocturnâ vagatione reprimendâ*, is accordingly inserted a section intituled *De vehiculis* (a section against *Phaëtons)* which, being § 6, changes the number of that which follows next to it, viz. that *De nocturnâ vagatione reprimendâ*, and makes it, instead of § 6, as in the above-mentioned earlier edition, § 7.

Lastly, at the end of this same *title* is moreover inserted an additional *section*, intituled *De reprimendis sumptibus non Academicis*, and which accordingly is numbered § 16, as will be seen presently: the day on which it passed is 16th December 1785.

In the manual in question, viz. in the edition of 1794, of neither of these additions is any intimation given; neither by mention made of their respective dates, nor otherwise.

But in this same interval, at various times, nine or ten in the whole, the body of the statutes had been taken in hand for the purpose of *amendment;* each time in the form of simple *addition:* in no one instance in the form of simple *repeal:* and, since the date (1794) of the above-mentioned latest edition, reckoning to the present time (March 1813) it has undergone amendment in *four* other instances, of which presently.

Of the interpolated section *De vehiculis*, I have not been able to learn the precise date. In the series of statutes at large the date, of the earliest which my inquiries have succeeded in obtaining, is 26th November 1767; of the latest, 22d June 1808: the series as far as it extends being put into my hands as a perfect one; and in this series, no statute to that effect, or on that subject, is to be found. The time at which it passed must therefore have been sometime between some part of the year 1756 and the 26th November 1767, as above.

Thus often has this same code passed under review.

To what cause, then, is the country indebted for this continually open exhibition? — an enormous and multifarious mass of perpetually violated regulations, together with the oath by which obedience is promised to them, all left standing, — standing together for so many successive ages, — impregnating the whole population of this seat and source of Church-of-England religion, and from thence that of the whole country, with a perpetually inflowing stream of perjury? Is it through inadvertence? No: but because, in regularly reverend and right reverend, not to speak of honourable and noble, eyes, if *perjury* be a bad sin, *innovation* is still worse: — *innovation*, in which is included the removal of evil, in every shape in which it exists at present; *innovation*, in the exclusion of which is included the perpetuation of abuse, in every shape in which, at the expense of *the subject many*, profit is derived from it by *the ruling few:* — an exclusion, in which may be seen a fundamental — and not the less so for being so carefully locked up in the character of a secret — article, in the only "*alliance*" ever spoken of that was not purely imaginary, "*between Church and State.*"

Thus far as to the additions made to the *subject-matter* of these oaths: now as to the additions made to the list of the *oaths themselves.* While all existing oaths continued to be thus dealt with, fresh batches of the same species of pie-crust have continued to be issued out from the same sacred oven. May 1st, 1800, a new system of *examination* instituted (examination for *degrees:*) and the efficiency declared to be rested upon the strength of this perpetually broken reed. "*Tit.* ix. *Sect.* ii. *De Examinandis Graduum Candidatis:* § 1. *De Examinatoribus designandis et* Juramento onerandis *per Seniorem Procuratorem.*"

Sometime in the year 1807, as may be inferred from the context (for there appears no date to it,) comes another statute with the same title, repealing, but immediately in part re-enacting, that so lately preceding one: innovating in this mode for the first time, and then no otherwise than upon a recent innovation: the first statute, as far as appears, by which, since the days of Laud, so much as a single atom of the once-consecrated mass was ever done away. By the same reverend hands, the same *load* is now carefully reimposed on the same reverend shoulders. With what degree of pressure and effect would any man be curious enough to calculate? — the *data* lie before him as above.

Moreover, though without any such idea stated as that of *load* or *burthen*, oaths have all along been sprinkled in on other occasions, and in other places, in and by the series of statutes, 13 or 14 in number, passed in the interval between 1756 and 1813.

Thus much for *revisions* and *enactments.* Now as to *representations* and *remonstrances.*

In a book published by a reverend divine (Vicesimus Knox,) then late a fellow of one of the colleges in this same seat of piety and perjury — a book of which an edition published so long ago as the year 1789 was *the tenth*, — a book which accordingly has had a greater currency (and thus under the very eyes of the reverend rulers in question) than

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perhaps ever fell to the lot of any book in which, in this or any other country, the subject of education has been touched upon — is inserted a letter to the then chancellor, Lord North, proposing a plan of reform, in which the species of perjury here in question forms the subject of the first article.

In holding up to view the universality, the constancy, the notoriety of this sin, together with the perfect consciousness of it in the minds of the reverend persons whose lives were passed in the commission of it, are employed in different parts of this his work, directly or indirectly, no fewer than 54 out of its 727 pages.

In the representations thus made by Mr. Knox, are included others of the same tendency, which at different periods had been made by three other writers: viz. in 1721, by Mr. Amhurst, under the title of *Terræ Filius*, in an anonymous periodical publication, reprinted in 2 vols. 12mo, in 1726: in 1725, by the Rev. Dr. Newton, Principal of Hart Hall, afterwards Hertford College, Oxford, in a tract intituled *University Education*, 8vo, pp. 209; and, in a year not specified, by R. Davies, M.D. of Queen's College, Cambridge, in a letter to the Rev. Dr. Stephen Hales, the natural philosopher.

That remonstrance, though from a consecrated hand, having been productive of no other fruit than that of exposing the reverend persons in question to a sort of censure, which being rather a passport than an obstruction to preferment, is of course to such persons a source rather of satisfaction than of uneasiness, the present attempt by a *lay* hand cannot, howsoever *fruitless*, be charged with being *needless*.

III. *The principle of Infallibility adhered to and acted upon to the last.*

In pages from 210 to 212, *infallibility* is mentioned as being among the attributes bestowed upon herself by the English *Holy Mother Church*, and accordingly acknowledged, and worshipped, and shared in, by the academic part of her metaphorical progeny. To the eye which, either in the memorials of the puritan Neale, or in those of the orthodox and highly favoured Strype, can endure to look into it, the whole history of the spiritual branch of the reign of Elizabeth is one continued body of evidence, concurring in the demonstration of this truth. Infallibility was the attribute of this church, under the governance of those princes of this church, whose thrones were subordinate to the throne of the virgin queen. These holy men were themselves *the church*: and the royal mistress of their lives and fortunes — who could have expelled any of them for schism, or burnt any of them for heresy — being herself *the church*, yea and more than the church — was not only herself infallible, but the cause that infallibility was in *them*.

Of the assumption of this attribute follows one proof out of a thousand: if, in such a matter, *words* are less conclusively probative than *deeds*, — yet, in such a matter, neither are words without their value.

Anno 1584: "Notwithstanding the charge of late given by your Highness," says *Archbishop Whitgift*, in a letter to the queen, dated the 24th of March in that year — "notwithstanding the charge of late given by *your Highness* to the lower House of Parliament, for dealing in the canon of the church; albeit also, according to your Majesty's good liking, *we* have sent down order .... yet have *they* passed a bill in that house touching that matter; .... *they* have also passed a bill .... contrary to the old canons continually observed among *us*, and containing matter which tendeth to the *slander of this* Church, as having hitherto *maintained an error*."*

To impute to this assemblage of constantly-corrupted and despot-ridden churchmen — corrupted by hope of preferment, corrupted by dread of arbitrary and perpetually-impending deprivation, with ruin and either banishment or death at the end of it, — to such a set of men, at a time, too, when reason had but just begun to recover the use of her limbs, — the fact of having maintained an error — so much as one single error — this *a slander!* a slander, when coming from the mouth of parliament! *This* Church! what church? — The very church which, after having so lately revolted from her ancient mother the *Church of Rome*, was, at that very time, and in relation to these very points, in a state of separation from perhaps all her sister churches — from all other Protestant churches — and, at this very time, herself in a state of continual, and not as yet completed, change.

In the very facility of making this change, by the same most reverend person is an argument found, for the putting an end for ever to all pretensions so unsuitable to the *limited*, and continually, so it were quietly, *reducible*, authority of an English parliament.

"If it pass by parliament," says he, "it cannot hereafter but in parliament be altered .... whereas, if it is but as a canon from *us*, by your Majesty's authority, it may be observed or *altered* at pleasure."

In this document we have one out of a multitude, in which, taken together, it may be seen how, of this virgin queen and *her little black husband* (so she was pleased to style this her favourite archbishop,)† it was the acknowledged purpose, as well as practice, to

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* *Strype's* Life of *Whitgift*, p. 198, in *Neale*, § 457.

† *Cotton's* Life of *Hooker*, prefixed to his *Ecclesiastical Polity*, p. 23.

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persevere in a state of continual change, secure of being as continually infallible.

In theory, such a horror of change, — and at the same time, in intention as well as in practice, so constant a state of change? — all this self-contradiction, how is it to be reconciled? The change was to go on, till — under the name of *Puritans*, all those who, in matters of religion, refused to change their belief, as well as practice, at the word of command, as often as issued, — and whose real crime was the preferring a government *by* parliament to a government *without* parliament, — were extirpated: after which, unless for some equally good reason, there was to be no change. And such exactly was the result.

As the laws of the Medes and Persians, so the laws called the *Thirty-nine Articles* (cut down as they were from a greater number) remained unchanged. But above the one code, as above the other, sat a despot, who, with his sub-despots, kept the rule of action — the inforced and efficient rule of action — viz. the will of those same despots — in a state of continual change.

So much for *infallibility*, and the *horror of innovation*: — the horror of innovation, which, being interpreted, is — the holy love of abuse, accompanied with the determination, by the blessing of providence, to give every practicable increase to it.

IV. *Habitual Perjury of the University Magistracy—further Proof of its Wilfulness.*

While this last sheet is at the press, in comes the *Oxford University Calendar* for 1813, of I know not what series of numbers the first that ever happened to meet my eye; and in it I read (p. 8) the following passage: —

"For the better government of the University, there is also an HEBDOMADAL MEETING OF THE HEADS OF HOUSES, who meet *every Monday*, and at other times when convened by the Vice-Chancellor. This meeting consists of the Vice-Chancellor, Heads of Houses, and Proctors, who are empowered to deliberate upon all matters relating to the preservation of the privileges and liberties of the University, and *to inquire into, and consult respecting the due observance of statutes and customs.*"

In the seven preceding pages may be seen moreover a more detailed explanation of those arrangements in the constitutional branch of the law, whereby the principle of *infallibility* on the part of the legislature has been so systematically acted upon, and, in pursuance of it, the property of *immutability* given to the body of the laws, and with it that of *incorrigibility* to the defects with which they swarm, and the vices which they generate.

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TRUTH *versus* ASHHURST;

OR,

LAW AS IT IS,

CONTRASTED

WITH WHAT IT IS SAID TO BE.

WRITTEN IN DECEMBER 1792.

FIRST PUBLISHED IN 1823.

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INTRODUCTION,

WRITTEN AUGUST 1823.

A SHORT time before the date of this paper, a charge, delivered the 19th of November 1792, to a Middlesex Grand Jury, by Sir William Ashhurst, then a Puisne Judge of the King's Bench, was printed by the *Constitutional Association* of that time, and circulated with no small industry. In digging for other papers, the present one has just been dug up. The MS. copy, from which this is printed, was taken more than thirty years ago, and has not since been read by me. If in season then, let any one judge whether it be less so now; or whether it is likely to be less so, so long as the form of the government is what it is. The comment is here seen; the text was not found with it; the fidelity of the quotations may however be depended upon.

JEREMY BENTHAM.

August 27, 1823.

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TRUTH *versus* ASHHURST.

ASHHURST.—I. *No man is so low as not to be within the law's protection.*

TRUTH.—Ninety-nine men out of a hundred are thus low. Every man is, who has not from five-and-twenty pounds, to five-and-twenty times five-and-twenty pounds, to sport with, in order to take his chance for justice. I say *chance:* remembering how great a chance it is, that, although his right be as clear as the sun at noon-day, he loses it by a *quibble*. Five-and-twenty pounds is less than a common action can be carried through for, at the cheapest: and five times five-and-twenty pounds goes but a little way in what they call a *court of equity*. Five-and-twenty pounds, at the same time, is more than three times what authors reckon a man's income at in this country, old and young, male and female, rich and poor, taken together:* and this is the game a man has to play again and again, as often as he is involved in a dispute, or receives an injury.

Whence comes this? From extortion, monopoly, useless formalities, law-gibberish, and law-taxes.

How many causes, out of each of which Mr. Justice Somebody has been getting in fees, while this speech of Mr. Justice Ashhurst's has been printing, more in amount than many a poor family has to live upon for weeks! For so long as you have five pounds in the world, no fee, no justice. O rare judges! While their tongues are denying the mischief, their hands are making it.

How should the law be otherwise than dear, when those who pocket the money have had the setting of the price?—when places, that help to make it so are, as all the world knows, some given, and some sold by them? A list of places of this sort, which Mr. Justice Ashhurst, or those to the right and left of him, sell directly or indirectly, aboveboard or under the rose, with the profits of each, and how they arise, would be no unedifying account: but where is the Parliament that will call for it?

What comes, then, into their own pockets, heavy as the expense falls upon the poor suitor, is nothing in comparison of what they see shared among their brethren of the trade,—their patrons, and bottle-companions, and relations and dependents. Ten thousand a-year the average gains of a first-rate counsellor, and attorney's in proportion. Three hundred pounds the least fee that is ever taken for going from one circuit to the next. Three or four such fees earned sometimes in a day—country attorneys, town attorneys, and attorneys with purchased places attached to particular courts—conveyancers, special pleaders, equity-draughtsmen, opening counsel, and silk-gowns-men,—all separate, and not unfrequently all to fee in the same cause. When Mr. Justice was a counsellor, he would never take less than a guinea for doing anything, nor less than half a one for doing nothing. He durst not if he would: among lawyers, moderation would be infamy.

Why is it that, in a court called a court of *equity*, they keep a man his whole life in hot water, while they are stripping him of his fortune? Take one cause out of a thousand. *Ten* appointments have I known made for so many distinct days before a sort of judge they call a *master*, before one of them has been kept. *Three* is the common course; and as soon as everybody is there, the hour is at an end, and away they go again. Why? Because for every appointment the master has his fee.

Some of these law places are too good to be left to the gift even of judges: of these, which bring in thousands upon thousands a-year, the plunder goes to dukes and earls and viscounts, whose only trouble is to receive† it.

As if law were not yet dear enough—as if there were not men enough trodden down "*so low as not to be within its protection*," session after session, the king is made to load the proceedings with taxes, denying justice to all who have not withal to pay them: all this in the teeth of Magna Charta. "*We will deny justice*"—says King John—"*we will sell justice to no man.*"—This was the wicked King John. How does the good King George? He denies it to ninety-nine men out of a hundred, and sells it to the hundredth.

The lies and nonsense the law is stuffed with, form so thick a mist, that a plain man, nay, even a man of sense and learning, who is not in the trade, can see neither through nor into it: and though they were to give him leave to plead his own or his friend's cause (which they won't do in nine cases out of ten)

* Davenant, quoted in Smith's "Wealth of Nations."

† In France, no fees to judges, no selling of law-places. Is it not this, for one thing, makes lawyers so eager to support Ministers in their schemes for cutting the throats of the French?—the French, who, whatever mischief they have done to one another, have done none to us, but love and respect us.

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he would not be able to open his mouth for want of having bestowed the "*twenty years lucubrations*,"* which they owned were necessary to enable a man to see to the bottom of it, and that, when there was not a twentieth part in it of what there is at present.

When an action, for example, is brought against a man, how do you think they contrive to give him notice to defend himself? Sometimes he is told that he is in jail: sometimes that he is lurking up and down the country, in company with a vagabond of the name of Doe; though all the while he is sitting quietly by his own fireside: and this my Lord Chief Justice sets his hand to. At other times, they write to a man who lives in Cumberland or Cornwall, and tell him that if he does not appear in Westminster Hall on a certain day he forfeits an hundred pounds. When he comes, so far from having anything to say to him, they won't hear him; for all they want him for, is to grease their fingers.

That's *law*: and now you shall see *equity*. Have you a question to ask the defendant? (for no court of law will so much as let you ask him whether his hand-writing be his own) you must begin by telling *him* how the matter stands, though your very reason for asking him is your not knowing. How fares it with *truth* all this while? Commanded or forbidden, according as a man is plaintiff or defendant. If you are a defendant, and tell lies, you are punished for it; if you are plaintiff, and will *not* tell lies, you lose your cause.† They won't so much as send a question to be tried by a jury, till they have made you say you have laid a wager about it, though wagers they tell you are illegal. This is a finer sort of law they call *equity*—a distinction as unheard-of out of England, as it is useless here to every purpose but that of delaying justice, and plundering those who sue for it.

Have you an estate to sell? Sometimes you must acknowledge it to belong to somebody else; sometimes see it taken from you by the judges, who give it to somebody else, with an order upon the crier of the court to give you such another: though, had it been given to your heirs for ever, you might have sold it without all this trouble. Is this specimen to your mind, my countrymen? The law is the same all over. Enemies to truth, because truth is so to them, they do what in them lies, to banish her from the lips and from the hearts of the whole people.

Not an atom of this rubbish will they ever suffer to be cleared away. How can you expect they should? It serves them as a fence to keep out interlopers.

* Blackstone's Commentaries, Introduction.

† The rule is, that every interrogatory must have a charge to support it, in which a man is obliged to assert, at random, whatever he wants to know.

ASHHURST.—II. *The law of this country only lays such restraints on the actions of individuals as are necessary for the safety and good order of the community at large.*

TRUTH.—I sow corn: partridges eat it, and if I attempt to defend it against the partridges, I am fined or sent to jail:‡ all this, for fear a great man, who is above sowing corn, should be in want of partridges.

The trade I was born to is overstocked: hands are wanting in another. If I offer to work at that other, I may be sent to jail for it. Why? Because I have not been working at it as an apprentice for seven years. What's the consequence? That, as there is no work for me in my original trade, I must either come upon the parish or starve.

There is no employment for me in my own parish: there is abundance in the next. Yet if I offer to go there, I am driven away. Why? Because I *might* become unable to work one of these days, and so I must not work while I am able. I am thrown upon one parish now, for fear I should fall upon another, forty or fifty years hence. At this rate, how is work ever to get done? If a man is not poor, he won't work: and if he is poor, the laws won't let him. How then is it that so much is done as is done? As pockets are picked—by stealth, and because the law is so wicked that it is only here and there that a man can be found wicked enough to think of executing it.

Pray, Mr. Justice, how is the community you speak of the better for any of these *restraints*? and where is the necessity of *them*? and how is *safety* strengthened or *good order* benefited by them?

But these are three out of this thousand: not one of them exists in France.

Lawyers are very busy just now in prosecuting men for *libels*: these prosecutions I suppose are among the wholesome *restraints* Mr. Justice thinks so *necessary* for us. What neither Mr. Justice Ashhurst, nor Mr. Justice Anybody-else, has ever done, or ever will do, is to teach us how we are to know what *is*, from what is *not*, *a libel*. One thing they are all agreed in—at least all among them who have had any hand in making this part of the law—that if what they call *a libel* is all true, and can be proved to be so, instead of being the less, it is the more libellous. The heavier, too, the charge, of course the worse the libel: so that the more wickedly a judge or minister behaves, the surer he is of not hearing of it. This we get by leaving it to judges to make law, and of all things the law of libels. Protection for the thief: punishment for him who looks over the hedge.—Oh, my dear countrymen, I fear this paper is a sad libel, there is so much truth in it.

‡ May now—1823—be transported.—*Editor of original edition.*

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I know of a young couple who had £28,600 between them, and who could not get married till they had given up £2700 of it: the lawyer's bill for the writings came to that money. You, Mr. Justice Ashhurst, who know so well what is *orderly* and what disorderly, tell us which is most disorderly—*truth, industry*, or *marriage?*

ASHHURST. — III. *Happily for us, we are not bound by any laws but such as are ordained by the virtual consent of the whole kingdom.*

TRUTH.—Virtual, Mr. Justice?—what does that mean? *real or imaginary?* By none, do you mean, but such as are ordained by the *real* consent of the whole kingdom? The whole kingdom knows the contrary. Is the consent, then, an imaginary one only? A fine thing indeed to boast of! "Happily for you," said Muley Ishmael once to the people of Morocco, "happily for you, you are bound by no laws but what have your virtual consent: for they are all made by your virtual representative, and I am he."

Look at this law, my friends, and you will soon see what share the consent of the whole kingdom has in the making of it. Half of it is called *statute law*, and is made by parliament: and how small a part of the whole kingdom has anything to do with choosing parliament, you all know. The other half is called *common law*, and is made — how do you think? By Mr. Justice Ashhurst and Co. without king, parliament, or people. A rare piece of work, is not it? You have seen a sample of it. I say, by the judges, and them only; by twelve of them, or by four of them, or by one of them, just as it happens: and you shall presently see how. This same law they vow and swear, one and all, from Coke to Blackstone, is the *perfection of reason:* the reason of which you are at no great loss to see. Their cant is, that they only declare it, they don't make it. Not they? Who then? Not Parliament, for then it would be not *common* law, but *statute.*

ASHHURST. — IV. *Happily for us, we are not bound by any laws but such as every man has the means of knowing.*

In other words: —

Every man has the means of knowing all the laws he is bound by.

TRUTH. — Scarce any man has the means of knowing a twentieth part of the laws he is bound by. Both sorts of law are kept most happily and carefully from the knowledge of the people: statute law by its shape and bulk; common law by its very essence. It is the judges (as we have seen) that make the common law. Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the judges make law for you and me. They won't tell a man beforehand what it is he *should not do*—they won't so much as allow of his being told: they lie by till he has done something which they say he should not *have done*, and then they hang him for it. What way, then, has any man of coming at this dog-law? Only by watching their proceedings: by observing in what *cases* they have hanged a man, in what *cases* they have sent him to jail, in what *cases* they have seized his goods, and so forth. These proceedings they won't publish themselves, and if anybody else publishes them, it is what they call a contempt of court, and a man may be sent to jail for it.*

If, then, you can be in the four Westminster Hall courts, and the twelve circuit courts, and a hundred other such places at once — if you can hear everything and forget nothing—if the whole kingdom can squeeze itself into a place contrived on purpose that it may hold none but lawyers—if it can live in those places for ever, and has always lived in them,—the "*whole kingdom*" may have that knowledge which Mr. Justice says it has of the law; and then it will have no further difficulty, than to guess what inference the judge or judges will make from all this knowledge in each case.

Counsellors, who have nothing better to do, watch these cases as well as they can, and set them down in their *note-books*, to make a trade of them; and so, if you want to know whether a bargain you want to make, for example, will stand good, you must go with a handful of guineas in your hand, and give half of them to an attorney, for him to give t'other half to a counsellor; and, when he has told you all is right, out comes a counsellor of the other side with a *case* of his own taking which his brother knew nothing of, which shows you were in the wrong box, and so you lose your money. Some of them, to drive a penny, run the risk of being sent to jail, and publish their note-books which they call reports. But this is as it happens, and a judge hears a case out of one of these report-books, or says it is good for nothing, and forbids it to be spoken of, as he pleases.

How should plain men know what is law, when judges cannot tell what it is themselves? More than a hundred years ago, Lord Chief-Justice Hale had the honesty to confess he could not so much as tell what *theft* was; which, however, did not prevent his

* Burrows' Reports, Preface.

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hanging men for theft.* There was then no *statute law* to tell us what is, or what is not, *theft;* no more is there to this day: and so it is with *murder* and *libel*, and a thousand other things; particularly the things that are of the most importance.

"Miserable," says that great Lord Coke, "miserable is the slavery of that people among whom the law is either unsettled or unknown." Which, then, do you think is the sort of law, which the whole host of lawyers, from Coke himself down to Blackstone, have been trumpeting in preference? That very sort of bastard law I have been describing to you, which they themselves call the *unwritten law*, which is no more *made* than it is *written* — which has not so much as a shape to appear in — not so much as a word which anybody can say belongs to it — which is everywhere and no where — which come from nobody, and is addressed to nobody — and which, so long as it is what it is, can never, by any possibility, be either *known* or *settled*.

How should lawyers be otherwise than fond of this brat of their own begetting? or how should they bear to part with it? It carries in its hand a rule of wax, which they twist about as they please — a hook to lead the people by the nose, and a pair of sheers to fleece them with.

The French have had enough of this *dog-law;* they are turning it as fast as they can into *statute law*, that everybody may have a rule to go by: nor do they ever make a law without doing all they can think of to let every creature among them know of it. The French have done many abominable things, but is this one of them?

Have you a mind, my countrymen, to see two faces under one hood? Hear two juries *charged*—a *grand jury*, and a *petty*:—"Gentlemen of the *Grand Jury!* You and everybody may know what the law is if you please: you are bound by none that you have not the means of knowing." — "Gentlemen of the *Petty Jury!* The fact is all you ever have to do with: it is our business to say what the law is; *for* say what you will, it is impossible that you should know anything about the matter." This was the language of Mr. Justice and his brethren, till parliament, t'other day, in spite of their teeth, taught them a better lesson. — God bless the parliament! — No dog-law! — Parliament for ever!

Mind this teacher of "*peace*" and subordination: according to him, if there are any laws which are made otherwise than "*with the consent of the whole kingdom*," or, that "*every man has not the means of knowing, we are not bound*" by them. And this he calls a happiness for us.† God ever keep us from such happiness! Bad as the law is, and badly as it is made, it is the tie that holds society together. Were it ten times as bad, if possible, it would still be better than none: obey it we must, or everything we hold dear would be at end.

Obey it we must: but, to obey it, must we not know it? And shall they whose business it is to make and obey it, be suffered to keep it from us any longer?

Now I will tell you, my dear countrymen, what Mr. Justice knows better things than to tell you; how it is, that what he would make you believe about *every man being his own lawyer* might be made true. If what there is good of *common law* were turned into statute: if what is common in both to every class of persons were put into one great book (it need not be a very great one,) and what is particular to this and that class of persons were made into so many little books, so that every man should have what belongs to him apart, without being loaded with what does not belong to him. If the general law-book were read through in churches, and put into boys' hands, and made into exercises when they are at school; and if every boy, when he came of age, were to produce a copy of it written with his own hand before he were allowed a vote or any other privilege; and if this general law-book contained a complete list of the *particular ones*, and measures were taken for putting them, and each of them, into each man's hand, as soon as the occasion happened which gave him a concern in it.

But then the matter of these law-books must be made up into sentences of moderate length, such as men use in common conversation, and such as the laws are written in in France, with no more words than necessary: not like the present statutes, in which I have seen a single sentence take up thirteen such pages as would fill a reasonable volume, and not finished after all: and which are stuffed with repetitions and words that are of no use, that the lawyers who draw them may be the better paid for them. Just like their deeds, such as you may see in any attorney's office, each filling from one to a hundred skins of parchment, long enough to reach the breadth or the length of Westminster Hall; all which stuff you must carry in your mind at once, if you would make head or tail of it, for it makes altogether but one sentence; so well do they understand the art of poisoning language in order to fleece their clients. All which deeds might be drawn, not only more intelligibly, but surer, in short sentences, and in a twentieth part of the room. A complete set of them might be adapted to all occasions to which there are any adapted of those at present in use, and would have been drawn years

* Hale's Pleas of the Crown: title Larceny.

† "Happily for us, we are not bound by any laws but such as are ordained by the virtual consent of the whole kingdom, and which every man has the means of knowing." — *Ashhurst.*

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ago, had there been any hope of seeing them made use of.

Now, God bless our good King George, preserve and purify the Parliament, keep us from French republicans and levellers, save what is worth saving, mend what wants mending, and deliver us out of the clutches of the harpies of the law!

A Card to JOHN REEVES, Esq. Barrister at law, Chief-Justice of Upper Canada, Chairman of the Society calling itself "*The Society for preserving Liberty and Property against Republicans and Levellers*," held at the Crown and Anchor Tavern, in the Strand.

Mr. Reeves says, he knows the English law, and that he knows the *spirit* of it. He has written the history of it in four volumes: he ought to know it; he ought to know whether what is here said of it is true: he knows this *charge* of Mr. Justice Ashhurst; *he says, it* "*breathes the spirit of the English law.*" He ought to know this charge, and what spirit it breathes: he adopts it, he trumpets it, he circulates it. He says, it is *suited to curb the licentious spirit of the times*, and so well suited, that it *must be read with heartfelt satisfaction by every true Englishman.* What is thought suited to produce an effect, does not always produce it: in one instance, at least, this charge, instead of *curbing*, has had the effect of *provoking* a spirit, which it would be nothing wonderful if Mr. Reeves were to deem *licentious*. Whether the spirit thus provoked has less in it of the spirit of a true Englishman, of a friend to subordination, as well as good government — to strict, as well as rational obedience, than the spirit of those who wrote, or those who answer for, and trumpet forth, this charge, the reader may determine. Mr. Reeves will see this comment on it; he will see whether there is any thing in this comment that he can controvert: if he can, and will, he who wrote it is ready to defend it, and if Mr. Reeves makes that a condition, to set his name to the defence.

Mr. Reeves is, amongst other things, a judge, and receives money for administering justice to Canada. Instead of that, he stays at home, makes parties, and circulates papers that deny and protect the abuses of the law. How is this? Is it that justice is useless to Canada, or that Mr. Reeves is useless to justice?

London, December 17, 1792.

NOTE AT THE CONCLUSION.

It is not altogether without compunction, that this conclusion is suffered to stand: so striking is the contrast, which, according to all accounts, the intrepidity and gentleness, manifested by this gentleman in the execution of a justly odious office, has since been seen forming, with the atrocity displayed in the creation and preservation of it. Next to the non-creation, or abolition, of the alien office, would have been the keeping the powers of it in the hands of Mr. Reeves.—*August* 27, 1823.

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THE KING

AGAINST

EDMONDS AND OTHERS:

SET DOWN FOR TRIAL, AT WARWICK,

ON THE 29th OF MARCH 1820.

BRIEF REMARKS,

TENDING TO SHOW

THE UNTENABILITY OF THIS INDICTMENT.

BY JEREMY BENTHAM, ESQ.

BENCHER OF LINCOLN'S INN.

FIRST PUBLISHED IN 1820.

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To the Jurymen of Warwickshire (perhaps also to those of Cheshire,) and such other persons whom it may concern.

Queen's-Square Place, Westminster,
March 27, 1820.

FELLOW-COUNTRYMEN,

FROM the public prints, I understand, that antecedently to the late trial of Sir Francis Burdett at Leicester, the jurymen, or some of them, had received an anonymous letter having reference to that trial, and that *that* letter had been spoken of as a threatening one. This paper is not anonymous, and there are no threats in it.

That which, to the purposes of substantial justice, is of real and undeniable importance is — that those persons, from whom the decision comes, should have had before them whatsoever information may be of a nature to secure the justice and propriety of that decision. Those things, which are of no importance to those same purposes, are — the *hands* from which the information comes, and the *forms* which accompany the delivery of it.

If, in the mode of delivery, there were anything of partiality or surprise — if, of alleged facts, communication were made, without their having been subjected to the requisite tests, employed as securities for trustworthiness, thus far the mode of delivery might be censurable, whatsoever credence, if any, were eventually given to the alleged facts.

In the delivery of the following paper, care has been taken that no such partiality or surprise shall have place. Copies will be delivered, not only to all persons who shall have been regarded as likely to be among the jurymen, for the trial of this cause, but to attorneys and counsel on both sides, and even to the judge. As to alleged matter of fact, capable of operating in the way of evidence, no such thing will the paper be found to contain in it: with the exception of what relates to the state of libel law in the United States, and that only in the way of illustration: the rest is all of it matter of mere argument, grounded on the state of English law as applied to no other than notorious facts.

Whatever, if any, may be the guilt of this address, the defendants in this cause are completely innocent of it. Not through any of their hands will it pass to any others. With no one of them has any communication on the subject ever been made by me. By no one of them is it any more expected, than by any other person who will receive it.

JEREMY BENTHAM.

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BRIEF REMARKS, &c.

A PROSECUTION, more palpably groundless, than this upon the very face of it may be seen to be, surely was never instituted.

In no part of it, is any specific and determinate criminal act so much as charged.

This is the main thing to be shown: and, for the purpose of the individual prosecution in question, this would be abundantly sufficient.

But, worded as it is, even if there were ever so many specific and determinate criminal acts, not only alleged but proved, still, without an incontestable violation of the juryman's oath, no verdict of guilty could be pronounced upon it. Of the *proof* that will be seen of this proposition, the *use* looks much further; even the proof would be found perhaps to apply to every indictment that, for centuries past, has ever been preferred: the *use* will be seen to apply to every one that *will* be preferred, unless kept clear from the foul spots which will here be brought to view.

I. To begin with those grounds of acquittal which apply more particularly to this individual indictment. Not but that those of them, which are of most extensive importance, would be found to have a not less proper and pointed application to another, which is said to be set down for trial on the same circuit; namely, that of the King against Sir Charles Wolseley, Baronet, and Joseph Harrison set down to be tried at Chester assizes, commencing on the 4th of April in the same year 1820.

1. First, then, as to those grounds of acquittal, which apply, in a particular manner, to this one individual prosecution, as characterized by the bill of indictment on which the above defendants are about to be tried.

In this indictment, I observe no fewer than nine distinct counts. All that is material, I observe to be comprehended in the first of them.

The enormous quantity of surplussage, of which the matter of the others is composed — surplussage, consisting of repetitions and distinctions without differences, may serve to indicate the character of the prosecution; but, unless in the way above alluded to, and which will be hereinafter particularized, adds nothing to the demand for acquittal; and, with this remark, may accordingly be dismissed.

In the indictment, in the King against Wolseley as above, there are but two counts. In the general character of the offence, it differs not from this. With equal propriety might the matter of the seven counts with which *this* is loaded have been stuffed into *that*: and, if the second count in it may be set down to the account of surplussage, still the quantity of vexation and expense thereby manufactured in that instance, will not be more than one-eighth of the quantity manufactured in this.

If, throughout the whole field of thought and action, there be any such things as innoxious and irreproachable acts, surely those which are here charged as criminal, will, upon the very face of the charge, be seen to be of that number.

To begin with the act which forms the characteristic article in the cluster of imputed crimes.

It consists in the appointment of an agent, who, under the denomination of *Legislatorial Attorney*, shall, it is intended, claim — claim by letter to the Speaker — admission into the House of Commons, in the character of Member for the town of Birmingham.

Well — and, in this, what is there that is criminal? On receipt of this letter, the Speaker either gives the admission demanded, or he does not.

If yes, here at any rate is no crime; unless the Speaker is an accomplice in it.

If no, what is the consequence? The legislatorial attorney takes his departure, and there the business ends.

Was it to force his way in, that he was to be sent? — to force himself in, or to be forced in by others? This is not so much as insinuated.

What claim, at the hands of law or government, was ever made, that might not, with as fair a colour of justice, have been charged upon a man as a crime?

As to the thing claimed —

Claim of a seat in the House, as preferred by petition in any the most ordinary mode?

Claim of a pew in a church?

Claim of a seat in a government or other public office?

Claim of an apartment in a private house?

As to the mode of claiming it —

In the case of the seat, motion for *quo warranto* information to try the right of certain descriptions of electors, or action at law, aiming, more or less directly, at that same object.

In the other cases, action of ejectment, action of trespass, or other action or suit of the most ordinary complexion, as the case may be.

So much as to the *end* in view, and the

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last in the list of the *means*, by which the accomplishment of that end is alleged to have been aimed at.

Equally clear it will be that, upon the face of the charge, there was nothing at all criminal in any of the anterior means employed in relation to that same end.

Here, however, if nothing criminal is *charged*, something of a criminal complexion seems to be insinuated. A large *number* is assigned as the number of the persons, who, on the occasion in question, for the purpose in question, were assembled: — A large number; and, from the mere magnitude of the number, the criminality of intention is required to be inferred. That number is twenty thousand or more.

Twenty thousand? Well, and if twice twenty thousand, what then? Not as yet was that law in existence under which the number of persons standing in the presence of each other, without any evil act, or perceptible evil intention, has been made to constitute an offence.

Twenty thousand? Well — and suppose it had been two hundred thousand. Of the multitudinousness of it, what would have been the effect? No mischief, in any assignable shape, having ensued, the greater the multitude, the clearer and stronger the proof of the innoxiousness of everything that was intended to be done? Why? Because, the greater the multitude prepared to co-operate in a scheme of mischief, the greater the facility for the accomplishment of it. These were the means: no power of resistance anywhere. These were the irresistible means of mischief, and no mischief done or attempted: towards any such attempt, not any the least preparation made. Instead of proof of mischievous intention, here surely is as complete proof of the absence of all mischievous intention as it is possible to conceive.

Well, but something more is charged as having been intended, and something more is charged as having actually been done.

The other things charged as intended — as being the things, for the doing of which the meeting was brought about, and took place, are — the procuring the adoption of the assembly for certain *written discourses*, alleged copies of which are accordingly set forth.

The things charged as done are — the giving the desired adoption to those same written discourses, and the delivery of certain spoken speeches, having, for their object, the obtaining of that adoption.

As to the written or printed discourses, — of the accuracy of the alleged copies, the defendants surely, supposing them even to have just ground, could scarcely, as it should seem, find any motive for starting a doubt. In any one of them, if there be anything criminal, then of every newspaper that has been published for the last half century (to go no further,) the publication has been a crime. On this supposition, unless it be in the way of undiscriminating praise, nothing that in that time has been published on the subject of the constitution, or any part of it, can have been published without a crime.

Remain, the speeches alleged to have been *spoken*, — spoken, without having, on the part of the speakers, been committed to writing: and of which, accordingly, no alleged copies are set forth.

These, of course — for what could be easier than to say so? — were "seditious, malicious, inflammatory," — in a word, everything that was bad.

Well: this is what is said of them. But the alleged speeches themselves, of which all this is said, what were they? Oh, this is what the defendants were not to be permitted to know. They might have questioned the evidence: they might have opposed it by counter evidence: they might have questioned the inferences: they might have opposed them by arguments. Accordingly, of these the tenor is not so much as professed to be given; nothing but what is called the "*substance*."

As to this alleged substance, it so happens that I have not as yet obtained information what it was. But what matters it?

For words alleged to have been spoken to the prejudice of an individual, no action can be maintained, unless the very words are set forth: no action, of which the worst result to the defendant is mere pecuniary loss. In the present case, to pecuniary loss to any amount may be added imprisonment to any amount.

As to these discourses, written and spoken together, suppose, for argument sake, there had been anything criminal in them, if justice, as well as vengeance had been the object, they would (would they not?) have been made the only matter of the indictment. To add to them those other acts and designs, which are so plainly clear of all criminality, what better object can it have had than that of causing lawful actions to be confounded with unlawful ones, confounded in the minds of the jury, confounded in the sentence of the judge?

Well then — in no one of all the acts here charged — in no one of them, supposing them all proved — is anything either criminal, or so much as in any way improper, to be found. On what, then, can have rested any hopes that may have been entertained of seeing the accusation followed by conviction? On nothing but certain other imputations of supposed intention: imputations, in regard to which let it be judged whether they can have had their origin in any other source than the passions by which the prosecution was produced.

Now then, as to these ulterior alleged original intentions, what are they?

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Intentions, yea, and *conspiracy*, to produce certain undesirable effects, of a general description, at indefinitely distant periods. As to the conspiracy, this will be considered by and by.

As to the undesirable effects, they are —

1. Discontent and disaffection in the minds of the liege subjects, and so forth.

Hatred and contempt of the government and constitution of this realm as by law established.

As to the *contempt*, let it suffice to observe, that, from persons in the one situation, towards persons in the other, the existence of any such sentiment not being possible in *any* instance, could not be possible in *that* instance: *hatred* in any quantity: yes: but towards any man, on whose will he sees his fate dependent, no man, who was in his senses, ever entertained any such sentiment as *contempt*. Contempt on account of this or that particular feature in the other's character, yes: but this is nothing to the purpose. By no such *particular* contempt, so long as fear remains, can contempt, to any practical purpose, be constituted.

Ferdinand the embroiderer was contemned. Yes: but Ferdinand the torturer, was he the less feared?

Remain, *discontent*, *disaffection*, and *hatred*. But these, what are they but shades of one and the same sentiment (call it what you will) emotion, passion, affection, or state of mind?

On a charge of this sort, suppose a verdict of guilty to be pronounced, and an uniform series of such verdicts, for such a cause, assured, — consider what would be the consequence. What is called *the liberty of the press* would thenceforward be not merely useless, but much worse than useless. Supposing misrule to have place, newspapers, instead of being a check upon it, would be exclusively an instrument of it, and a support to it. Liberty of exposing it? No: liberty of justifying it and praising it? Oh yes: full liberty, and gain too, into the bargain. Such, if the system here pursued be constantly acted upon —such, it will be seen, will be the liberty of the press.

At this time, behold already the system of libel law brought out in all its perfection. First came this and the other indictments: then, as if in acknowledgment of their insufficiency and untenability, came the statutes in which the same principle is adopted, is applied to practice, and is made to receive the sanction of the legislature: the legislature — including that House, by which its own acknowledged corruptions are thus defended against all possibility of remedy.

The principle is — that, in so far as the conduct of the men in power, whoever they are, is in question, or the state into which, by their conduct, the rule of action, in all its several parts, has been brought, — no discussion shall have place, either in spoken speech, or in writing — neither evidence, nor argument, shall be employed — on any other than one side, and that side theirs: in a word, it may be styled the principle of despotism, as applied to political discourse.

Talk of liberty indeed! So far as depends upon the definition of a libel, whether made under that sort of law which is made by parliament, or that sort of law, which, on pretence of being declared, is made by judges,— the liberty of praise always excepted, see and judge whether, in speaking of the conduct of government, or of "the members of government," there be any more liberty in England (not to speak of Scotland) than in Morocco.

Look first to the sort of law the judges make. Look to the great manufactory of the political branch of penal law — the King's Bench.

To go no further back than the middle of the late reign,— for this will be quite sufficient—

Look to the year 1792. See what Lord Kenyon says:* "I think this paper" (in the Morning Chronicle) "was published with a wicked, malicious intent, to vilify the government, and *to make the people discontented* with the constitution under which they live. That is the matter charged in the information: that it was done with a view to vilify the constitution, the laws, and the government of this country, and to infuse into the minds of his Majesty's subjects a belief that they were oppressed; and, on this ground, I consider it as a gross and seditious libel."

Look onwards now to 1804. See what Lord Ellenborough says:† "If in so doing, ('exhibiting the folly or imbecility of the members of the government,') individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation." — "If individual feelings are violated," — *i. e.* in plain English, if, on the part of any one of the persons so situated, any uneasiness is in this way produced, — as often as any written discourse, productive of this effect, is published, every person instrumental in the publication is to be punished for it. Now, if there be any sort of proof by which, more than by any other, a man's having experienced uneasiness, from the cause in question, is effectually demonstrated and put out of doubt, it is surely the fact of his having imposed upon himself the expense, and trouble, and odium, of prosecuting for it. Admit but this, the consequence is as satisfactory as it is simple. It is — that, in every case o

* King against Perry and Lambert, 9th December 1792. Erskine's Speeches, II. 371.

† Holt's Libel Law, 2d Edition, page 115, from E. T. K. B. 1804; and 7 East. Rep., The King *v.* Johnson.

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libel "on the members of the government," the very act of prosecution is conclusive evidence of the guiltiness of the party prosecuted, and a verdict of guilty ought to follow, of course.

Look back for a moment at Lord Kenyon. Speak but a word in any such "view as that of infusing into the minds of his Majesty's subjects any such belief as that they are oppressed," — the writing in which you say this is "a gross libel," and your punishment,—or, as the piety of Lord Ellenborough phrases it, your "*visitation*," is, of course, proportionable. Now suppose, for argument sake, that, in any one instance, it has happened to these fortunate subjects, or any one of them, to have *actually been* oppressed: is he to presume to take any such liberty as that of saying so? No: not if Lord Kenyon, or Lord Ellenborough, or (one may almost venture to say) Lord Anybody else in that place, with their penal visitations, can stop his mouth.

A constitution — a government — a set of laws, under which, if all men were oppressed to the uttermost, no man could, without being punishable, dare to say that any men are oppressed — punishable in a way which, to nine-tenths, or nineteen-twentieths, would be utter ruin, — such, in this country, are the constitution, the government, the whole fabric of the laws, according to the view so repeatedly and uniformly taken and given of them in the King's Bench.

The more closely the nature and consequences of this doctrine are looked into, the more clear will be our conception of the influence it can not but have on the character of the constitution, on the goodness of the government, on the condition of the people. The more grinding the oppression exercised, and the more flagitious the conduct of those who exercise it, the more flagitious must, according to this doctrine, be the crime, and the more excruciating the intended punishment, of those who presume to bring to view all or any of these things as they are: the more corrupt and tyrannical the state of the government—of the law — constitutional branch and other branches taken together — the more flagitious and unpardonable must be the crime of representing it to be what it is.

How should this be otherwise? In so far as he has any regard for the public interest, his own share in it included—the more highly detrimental to that interest any measure of government, any arrangement of law, any misconduct on the part of the "members of the government," or any one of these, is,— the more intense the displeasure which, by the view of the imperfection in question, will have been kindled in the mind of that man. But, the more highly detrimental it is in his own conception, the more pernicious, in so far as depends upon him and his report of it, will it be, in the conception of all such other persons, to whom the conception he has formed in relation to it shall have come to be known. To use the words of the indictment, the more intense "the *discontent*, the *disaffection*, the *hatred*," produced by the oppression, in the breast of any man who speaks of it, the more anxious and industrious will he naturally be to communicate the like affections to others, and the greater the number of those to whom, in so far as he succeeds, he will have communicated it. But the more intense and extensive the displeasure thus seen to be excited, as towards them, the greater, of course, the injury done to the beings in question — to the beings of both sorts spoken of: to the *ideal* beings above mentioned; and to the *real* beings, those "members of government," whose "*individual feelings*," be their conduct what it may, are thus to be kept from "*violation*" at any price: as to the constitution, with its *et ceteras*, the more tyrannical and corrupt it is, the more justly and severely "visitable" will be the crime of him who has dared to speak of it as being what *it* is: as to the oppressor whom it has bred, and who in his turn upholds it, the more flagitious the oppression he exercises has been, the more flagitious and severely visitable is the oppressed individual, who has dared to speak of him as being what *he* is.

Not to speak of any other indictment — to profess to give effect to the principles acted upon by this indictment, and by the statutes by which it has been followed — to profess this, and, at the same time, to profess to allow to go unpunished any writer whatsoever, who presumes, in any way, to question the propriety either of any part of the rule of action — real or imaginary — statute law or common law — or of the conduct of any one of the "*members of the government*," is surely a contradiction in terms. Say what you will, if it be to any such effect, what you say either has no tendency at all, or it has that same forbidden and punishable tendency: in saying it, either you have no view at all, or you have that same forbidden and punishable view.

Discontent, *disaffection*, *hatred* — the objects — the affections indicated by these words, — who does not see, that these are but so many degrees in the scale of *disapprobation* or *displeasure*? But, in the words *disapprobation* and *displeasure*, we have the names of an affection or emotion, the degrees of which rise, one above another, in a scale, the lowest point of which is at *apathy*, and the highest at *madness*; and of no one of these degrees is it possible for words to convey any such description as can enable a man to distinguish the place it occupies on the scale. On this occasion, or on that other occasion — in a word, on any occasion — what is the de-

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gree a man may be allowed to feel? what is the degree a man may be allowed to endeavour to communicate? By the same object by which one degree of disapprobation is produced in the breast of one man, another degree will be produced in the breast of another: in the same breast it will at one moment be at one degree, at another moment at another.

Will men allow of no written expression of *disapprobation* or *displeasure* whatsoever? then, without self-contradiction in terms, they cannot allow of *complaint*. Not to speak of remonstrances, away go all petitions for redress. Here would be an improvement! How commodiously, by this means, would the business of government be simplified! Yes; could it but be accomplished: but, as yet, that may be too much to look for. Will they then allow of any such expression? Let them then make known what the degrees are which they will allow, and what those are which they will not allow. Let them make known what, on each occasion, are the *degrees* which they will allow to be *felt*, what the degrees which they will allow to be *expressed*, what the degrees which they will allow to be endeavoured to be "*excited*" and "*stirred up*." Of these several degrees, let them give such descriptions as shall render it possible, at least, for a man to know what degree he *may*, on each occasion, give expression to, without being "*visited*," and what he may *not* give expression to, without being "visited." Let them, in a word, construct, and, along with the statutes at large, expose to sale, an appropriate *pathological thermometer*: an instrument, by which shall be indicated the degrees of mental caloric allowed to have place, as being favourable to the health of the *body politic*, as, in an ordinary thermometer, in a line with the word *temperate*, the degree of physical caloric regarded as most favourable to the health of the *body natural* is indicated. This done, then, and not before, will be the time for "*visiting*," with justice and with effect, discourses tending to the production of the undesirable sentiments, affections, and states of things indicated by the words *discontent*, *disaffection*, *hatred*, and whatsoever other similar ones may be in store. This *not* done, they not only leave exposed to undue punishment, the restless men who stand exposed to the temptation of thus offending, but, what is so much worse, they leave their own high pleasure continually unfulfilled, and their own "*individual*" and precious "feelings" as continually violated.

Oh, but (says somebody) when Lord Kenyon spoke of the published intent of "*vilifying the government*," and so forth, and thereby of producing "*discontent*," as a thing not to be endured, what his learned lordship meant was — not the presenting *facts* to view — facts, whatever were their tendency—but comments — comments pouring down, in scurrilous and offensive terms, reproach upon the *persons*, ideal or real, and thus "*violating the* FEELINGS" of the real ones. So it was with Lord Kenyon: and therefore so it was with Lord Ellenborough; for these two were one.

Alas, sir! comments were indeed in their lordships' view, but *facts* were not the less so: facts were what they had in view the suppression of, and that with still greater anxiety than any comments, how reproachful soever, that could be made on any such facts. On prosecution for a libel, whether by indictment or information, if the libel be a political one, if the persons struck at are "*members of the government*," is not the truth of the imputation, according to all manufacturers of King's-Bench law, no justification, nor so much as extenuation? — according to some of them, even an aggravation of the crime?

Now then, if we come to "individual feelings," and the things that violate them, by what is it that they are likely to be most sensibly violated? Is it by mere words of empty reproach — words, by which nothing else is proved, but the anger which the utterer feels, or would be thought to feel, as towards the object against which they are uttered; and from which any bad effect that is produced upon reputation is no less apt to attach upon the reputation of the party reviling, than upon that of the party reviled? Is it by such empty sounds, or is it by words by which determinate facts are brought to light — misdeeds by which, in proportion to their enormity, the reputation of the misdoer is soiled and depressed?

Which would give you most uneasiness (answer me, whoever you are,) to be *called* a thief, or to be *proved* to be one?

Now then, if I were a juror, under any such indictment, would I, for anything that a man had been proved to have said, either in speech or in writing, against any of those exalted personages, ideal or real, on any such ground as that of an alleged tendency to produce *discontent*, *disaffection*, or *hatred*, — would I join in a verdict of guilty? Not I, indeed.

With pride — with selfish terror — with malignity — on benches or in Houses — suppose the "members of the government" — suppose them mad — would it be for me to infect myself with their madness, and concur in giving effect to it? Ah no: rather would I do what depended upon me towards staying the plague, instead of spreading it. Hatred, is it not a contagious passion? — from the harbourer and proclaimer, is it not apt to pass to the object of the hate?

Nay, but (says somebody) you have been too hasty: when you saw what Lord Chief Justice Lord Kenyon said, you should have seen what Mr. Attorney-General said:* "The

* 1 Russel, p. 323.

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right of every man to represent what he may conceive to be an abuse or grievance in the government of the country can never be questioned."

Alas, sir! this may satisfy you, whoever you are, but it cannot satisfy me.

In the first place, it is only an attorney-general that says this. But an attorney-general may say what he pleases, and nothing comes of it. He may say what he pleases, nobody is bound by it; not even he himself. In this or any other way, he may be as liberal as he pleases, and all without expense.

But, in bringing to view this essence of liberality, one drop there is which you have omitted. This drop is a parenthesis: and, by this parenthesis, the effect of the including clause is reduced to — let anybody say what. "If his intention in so doing be honest," says the qualifying clause — "if his intention in so doing be honest, and the statement made upon fair and open grounds."

Thus far Mr. Attorney-General. Unfortunately, his (the defendant's) intention never is honest: the special pleader or other draughtsman takes care it never shall be; he makes it "seditious, malicious," and everything that is bad; and this is matter of form: these are words of course; and, though they were never true, would of course be taken to be true.

Then as to the *fair and open grounds?* What are the grounds open to him? Not any matters of fact. To produce anything of this sort, would be to attempt to prove the *truth* of the libel: which (as hath been seen) is never to be endured.

Oh, but what is this you would have us do? Would you have us destroy the government? Would you leave the government of the country without protection? Its reputation, upon which its power is so perfectly dependent, — would you leave that most valuable of its treasures without protection? Would you leave it in the power of every miscreant to destroy it? In such a state of helplessness, is it in the nature of things that government should anywhere subsist?

Subsist? Oh yes, everywhere; and be all the better for it. Look to the *United States.* There you see government: do you not? Well: there you see government, and no libel law is there: the existence of the supposed deficiency you shall see: and where libel law is the article, you will see how much better *deficiency* is than *supply.*

In answer to a letter of inquiry written by me not long since — the exact time is not material — here follows all that relates to this subject, of a letter written by a person whose competence to give the most authentic, and in every respect trustworthy, information on this subject, is not to be exceeded: —

"Prior to what was commonly called *the sedition act,* there never was any such thing known under the federal government of the United States (in some of the individual states they have sometimes, I believe, taken place) as a criminal prosecution for a political libel. The sedition act was passed by congress, in July 1798. It expired by its own limitation in March 1801. There were a few prosecutions under it, whilst it was in force. It was, as you have intimated, an unpopular law. The party that passed it went out of power, by a vote of the nation, in March 1801. There has been no prosecution for a political libel, under the authority of the government of the United States, since that period. No law known to the United States would authorize such a prosecution. During the last war, the measures of the government were assailed, by the party in opposition, with the most unbounded and furious licence. No prosecution for libel ever followed. The government trusted to public opinion, and to the spontaneous counteracting publications, from among the people themselves, for the refutation of libels. The general opinion was, that the public arm grew stronger, in the end, by this course.

"I send you a volume of the laws of the United States, containing the sedition act in question. It will be found at page 97, ch. 91. You will observe a departure from the common law, in that *it allowed a defendant to avail himself of the truth of the charges contained in the publication.*"

Thus much for my authority: whose name I cannot at this instant take upon me to make public.

This same *sedition act,* pity it is that the necessary limits of the present paper forbid the insertion of it: another occasion may be more favourable. It will then be seen how complete the proof it gives of the needlessness, and thence of the uncompensated mischievousness, not only of our libel law, — imported as it was from the Star-chamber, by a single judge of King James or King Charles's making, the Lord *Coke,* — but of every one of the six new laws made by his Most Excellent Majesty that now is, with the advice of his ever faithful Lords and Commons: made, for the defence of everything that is rich and powerful, supported by the whole body of the constituted authorities, and an army of 100,000 men, against the attacks of perhaps as many unarmed men, supported by their wives and children.

Think not that — because if the reputation of an individual were left without protection at the hands of the judges, it would be a defect in the laws, — it would be a like defect, if the reputation of the government — the ideal being, or that of the members of government, the real beings — were left in the same unprotected state.

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The individual would, in such a case, be exposed to injustice: — the government, the member of government, in this same case, is *not* exposed to any injustice. He is not, even under the government of the United States, with its frugal means: much less would he be under the government of this country, with its unbounded means.

Against attacks on reputation, of the whole number of individuals it is but a small proportion that have any tolerably adequate means of defending themselves: money, in no small quantity, is requisite for such defence. In this shape, as well as every other, the means which government has, are absolutely without limit.

An individual — be it ever so completely unjust, it is a chance whether the attack upon his reputation finds him adequately prepared for his defence. Government — the members of government, as such — are, or might be, and ought to be, in a state of constant preparation for defence against every attack to which they stand exposed.

Whatsoever inconvenience, in consequence of any attack made upon his reputation, it happens to an individual to sustain, he remains without compensation for, unless it be at the expense of the defamer. The member of government — no inconvenience, from any such cause, can *he* sustain, that he is not amply compensated for, and beforehand: he is paid for it, in most instances, in money as well as in power: he is paid for it in all instances in power.

To the individual it may happen, to have no other individual for support in any shape: the member of the government has every other for his support in every shape.

We come now to the word *conspire*. This word, it will be seen, has been thrown in as a make-weight. Separately or jointly, its two accompaniments — *combine* and *confederate* — would not have sufficed. To combine and to confederate is no more than, in the language of the chancery branch of lawyer's trash, each defendant does with every other, if the draughtsman, by whom it is penned, by authority of the Lord Chancellor, who calls this *equity*, is to be believed. As to that which they (the present defendants) *combined* and *confederated* to do — whether any the slightest shade of guiltiness, legal or moral, be to be found in it, has already been seen. But some other word was to be introduced at any rate: some word, by which, in this case as in any other, a colour of guilt might be laid on a ground of innocence. The word *conspire* was looked out and added for the purpose. Yet, even with the aid of this word, how is the case of the prosecution mended? In the language of poetry (to whom can it be unknown?) all manner of delightful persons, as well as things, are continually *conspiring* to produce the most delightful effects: in the language of poetry? yes, and of ornamental, nay even of ordinary, prose. Thus far, then, no great progress is made by the addition. But *to conspire* (the verb) has, for one of its kindred (its *conjugates*, as the logician's phrase is) *conspiracy*, the substantive: *conspiracy*, yes: and *conspirator* to boot. But the sort of *combinations*, to which the word *conspiracy* has been wont to be applied, have very commonly been mischievous ones — extensively as well as intensely mischievous ones: *conspirators* (the actors in these combinations) mischievous, and therefore so far, not only actually, but justly, odious men.

As to the word *conspiracy*, into the body of the indictment itself, the learning of the learned scribe has not suggested, or at any rate has not produced, the insertion of it. But, in a criminal calendar — at any rate in a court newspaper, or in a placard — it was capable of being made — in fact, it has been made — to serve. At this moment, "*Trial of Hunt and others for a conspiracy*," is to be seen in placards. And the men of *Cato Street* — their name, is it not everywhere the Conspirators?

Now, of all this abuse of words, what was the object? The same as in the instance of those other words of reproach, which have already been brought to view: — the words "*malicious*, *seditious*, and *ill-disposed*;" by exciting and inflaming the passions — the angry passions — in the breasts of jurymen, to lead astray their judgment, and cause them to say, and fancy they see, guiltiness, where nothing is really to be seen but the purest innocence.

In this endeavour, such as it was, no wonder if it was among the expectations of the lawyers for the prosecution, to find themselves seconded and supported by judges.

In the manufacturing of that spurious article, which they have, to so unbounded an extent, succeeded in palming upon the people under the name of *law* — even *common law* — among the instruments, which the Westminster-Hall judges, with the law-bookmakers, their confederates, have, for so many ages, been employing — have been an assortment of words and phrases, to which, after taking them out of the body of the language, native or foreign, they have, on each occasion, though on every occasion without explanation or warning, attached whatsoever meaning presented itself as being best suited to the professional and official purpose. Great would be the instruction — not small one day perhaps the use — would any intelligent and benevolent hand bring together and lay before the public, with apt comments, the complete assortment of them. Meantime, in addition to the present word *conspiracy*, take for a sample the word *libel*; to which may be added *contra bonos mores*, *blasphemy* and *malice*.

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The more extensive and indeterminate the import attached to the word in the state in which they found it, the better it was found to be for that same purpose: for, the more indeterminate its import, the less the risk they ran of seeing, on the part of juries, discernment and firmness sufficient to detect and frustrate any such misapplication as the purpose required should be made of it.

Now, in regard to the word *conspiracy*.

From a slight sketch of the history of the law on this subject, no small instruction may be derived. Along with the perfect groundlessness of the accusation, in this, not to speak of so many other indictments preferred in pursuance of the same system, may be seen, as a corollary, a specimen of the manner in which the business of legislation has, at all times, and to so vast an extent, been carried on, and the formalities of parliamentary procedure thus far saved, by a few nominees of the crown, acting in the character of judges.

In its original *physical* sense, to *conspire* (a word of Latin origin) meant *to breathe together*. In the original *psychological* sense, it meant to co-operate, more particularly in the way of discourse, towards any purpose whatsoever, good, bad, or indifferent: these were its original senses.

But from, or along with, the *verb to conspire*, came the *substantive*, *conspiracy:* and, from the earliest times, though the sense of the *verb* still continues to be unrestricted by any limitation on either side, the *substantive*, for anything that appears, has never been employed in any other than that narrower sense which is termed *a bad sense:* in this bad sense it means *co-operating, more particularly in the way of discourse*, to a supposed mischievous, or on any other account forbidden, or disapproved of, purpose.

For the designation of a particular act, or mode of conduct, for the purpose of its being dealt with as a crime — the earliest use made of this word may be seen plainly enough in the law books. The species of act is that which may be termed *juridical vexation:* the applying to the purpose of injustice, those powers, which, in profession at least, are never given with any other intent than that they should be employed in the furtherance of justice.

Now mind the misapplication, the confusion, and the unbounded power exercised under favour of it. In regard to any act that has been dealt with as criminal, the *species* of the act is one thing; *the number of the persons* co-operating in the performance of it, is another and widely different thing. Manifestly, not to any one species of act exclusively, but to every species of act whatsoever, is the circumstance of *number*, in this way, applicable. From this circumstance, to deduce a denomination applied exclusively to the designation of one particular sort of act, accompanied with an intimation of its having been, or being about to be, dealt with as an offence, was surely a course as ill adapted as can well be conceived, to the ends of language. What can be more inconsistent with clear conception — what can be more amply productive of confusion — than the manufacturing a name for a particular species of offence, out of a circumstance equally apt to have place in every species of offence?

Be this as it may, the species of offence which has been mentioned, namely, *juridical vexation*, is the species of offence to the designation of which the word *conspiracy* was applied in the first instance. This was as early as the reign of Edward the First.

Of this mode of working vexation and injury — of this, or something scarcely distinguishable from it — cognizance, in the way of penal prohibition, may be seen taken by statute law, as long ago as the reign of that same monarch: year of his reign 33; year of our Lord 1304.* Thus it is, that of the vast fabric which, under the name of conspiracy, may be seen reared by judges, the first stone, though no more than the first stone, was laid by the legislature.

Of a prosecution for this cause at common law, an example occurs as early as the reign of Henry VII.†

From that time, down to the early part of the present reign, thinly scattered in a space of nearer to five than four centuries, reckoning from the time of the above statute, are to be seen, at the rate of not so many as one to a century, instances of the application made of this word to the creation of new crimes; of crimes having nothing in common, either with the one first created, or with each other, except this same accidental and so completely uncharacteristic circumstance.

It was by Lord Mansfield that the example was set of giving to this word such an extension as should render it applicable to the purpose of affording a ground for the inflicting of punishment, on the score of any act, the contemplation of which should have produced, in the mind of the judge, a desire to cause punishment to fall upon the heads of the persons concerned in it.

When exercised by a man's sole authority, without any other man either to say *nay* to the whole, or to narrow the extent of it by limitations and exceptions, — legislation is at once a quick and pleasant work. First to move to bring in *a bill;* then, if leave be given, to bring it in, and then defend it, not only against rejection, but against amendment, — defend it in person, in one House, and by proxy, if procurable, in another, — is a tedious

* *Vide* 33 Ed. I. St. 2. — *Ed.*

† Year-Book, 20 H. 7, 11. b. in Comyns's Digest, title *Pleader*, 2 K. *Pleader in Conspiracy.*

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process. Of the inconvenience of the latter mode, no judge, especially if to a seat on Bench, he adds a seat in House, fails of being sufficiently sensible; no man was ever more acutely and efficiently sensible than Lord Mansfield. Occasion happening to present itself, he passed in this common-law form, a dictum having the force and virtue of an act of parliament, creating an entire new species of *conspiracy*, consisting in the act of selling unwholesome provisions: meaning, doubtless, as and for wholesome ones. But, to the only sort of wrong-doing act, the punishment of which had, under the denomination of *conspiracy*, had the warrant of the legislature, it bore no more resemblance (as anybody may see) than the most dissimilar act that could be named.

Following the example of his illustrious predecessor, it was but as it were the other day, that Lord Ellenborough, in the course of his reign, passed another act of common law, erecting the offence of *endeavouring to raise or lower the price of government annuities by means of false reports*, into another species of *conspiracy*.

What is plainly useful and perfectly proper, is — that the doing injury to the health of individuals, known or unknown, by means of unwholesome provisions, if sold as wholesome, should be made punishable. What is no less so, is — that the obtaining, or seeking to obtain, a profit, by causing the price current of property in the shape of government annuities, or in any other shape, to rise or fall, by means of false reports spread for the purpose, should be made punishable. It is one means of *obtaining*, or seeking to obtain, money *by false pretences*: a species of fraud, the proper name of which is not unknown, having long been employed in statute law.

But, so long as the people have the effectual filling of a seat in parliament, though it were but a single seat, it is very far from useful or proper, that by a nominally independent, but in reality ever-aspiring and ever-dependent creature of the crown, who, by his obsequiousness to high-seated will, on a small scale at the bar, has been exalted and engaged to practise obsequiousness to that same will on a vast scale on a bench — that by any man so situated, the conjunct power of King, Lords, and Commons, should be exercised, is very far from being either useful or proper, even though it were to the best of all imaginable purposes; for, it is by applying it thus to good purposes, that, in those situations, men acquire that power, which, as surely it has been made their interest, it has been their practice, to apply to the very worst of purposes.

Thus plainly untenable, on every ground of law as well as reason, is the attempt made, in the present instance, to fix upon the defendants the charge of *conspiracy*, in the character of a legally punishable crime. Not equally so would be an indictment, if preferred against the several persons concerned in the institution and prosecution of the present indictment.

Setting aside the very few innovations above mentioned, and those so many palpable aberrations, there would remain, — for the original and sole common-law offence, acknowledged as such, in a series of cases covering a space of several centuries, — the offence of *juridical vexation*; and that common-law offence having, as hath been seen, its warrant in statute law — there would remain, I say, this offence, coupled with the circumstance, that persons more than one have been concerned in the infliction of it. In addition to the vexation, or though it were but the *intention* to produce it, to invest the offence in the most unexceptionable manner, with the appellation of a *conspiracy*, requires nothing more than this — namely, that the prosecution was groundless; or at the utmost nothing more than, on the part of the offenders, the consciousness of its being groundless: for, upon the face of the book, nothing more than the mere *groundlessness* appears to have been uniformly required; not even the *consciousness*.

In the present instance, who, on this supposition, would be the *conspirators*? To know exactly what the course is, which, in this respect, the business has taken, has not fallen within my competence. But, for the title conferred by this word, the following persons present themselves as candidates: — 1. The learned counsel employed as counsel for the crown on the trial; 2. The solicitor of the treasury, or any other person employed as attorney in the prosecution; 3. The special pleader, or other learned penman by whom the indictment was drawn up; 4. His Majesty's attorney-general, and his Majesty's solicitor-general, if it is by or with the advice of those great functionaries that the prosecution has been instituted and carried on; 5. The lords commissioners of his Majesty's treasury, if it was by their order that the prosecution was instituted; 6. The members of that select body of his Majesty's privy council, which is distinguished by the name of the *cabinet council*, if it was with them that the business originated, or if it be through them that it has passed.

But this indictment is but one out of a number of indictments, all of them results of so many sets of acts, performed in execution of the same general design: treating, on the footing of a punishable offence, every endeavour which, by persons acting elsewhere than in parliament, shall have been made, towards the obtaining of any change in the representation of the people in parliament: construing

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every such endeavour into a crime, and thus, in case of any imperfection in the mode of that representation, rendering that imperfection for ever remediless: in case of any system of oppression or depredation, or other national grievance, growing as a necessary effect out of such imperfections, rendering all redress of any such grievance for ever hopeless.

Oh, but our oaths! our oaths! Perish liberty! perish the country! We must not, we will not, violate our oaths!

Well then, my fellow-countrymen, if such be your determination, on no account to violate your oaths, I desire nothing better. This leads me to the circumstances, which, if in the present charge there were matter ever so plainly criminal — and ever so much of it, and all of it proved — would, in this case (not to speak of other cases) suffice to render it impossible for a jury, consistently with their oaths, to concur in a verdict of guilty.

Of whatsoever there will be to say in proof of this position, the ground is constituted by this uncontrovertible assumption: — namely, that it is not consistent with their oaths, for a jury to declare their belief of anything which, in their eyes, has not been sufficiently proved by the evidence that has been before them: still less their belief in the truth of any position, of the falsity of which they have no doubt: and therefore, if so it be, that, whenever, to constitute an offence as described in the indictment, the concurrence of every one of a number of circumstances therein stated is required — then, and in that case, if, of the whole number of these circumstances, there be any one which either had manifestly no existence, or (what comes to the same thing) has not been proved to have been in existence, no defendant can, consistently with the juryman's oath, be pronounced *guilty*, with relation to that same offence. The circumstance thus left unproved — be it ever so plainly irrelevant, or even ever so ridiculous, its being so makes not, in this respect, any difference. The accusation on which the jury have to pronounce, is that which it *is*, and not anything which it *might* have been, and is *not*.

On another occasion I may perhaps give more latitude as well as more particularity to this discussion. On the present occasion, what is said on this subject, must of necessity be as compressed as possible.

On the present occasion — to prove, on the ground now stated, the impossibility of a verdict of guilty, without a violation of the juryman's oath—all that remains is—to point out, in each of the nine counts in question, — among the circumstances, of all which, in the description of the alleged crime the existence is alleged, — one or more, of which it will be plain, either that they had no existence, or that they have not been proved.

Among all these counts, should there be any one that shall be found altogether clear of these, as well as all other, unproved allegations,—then, if the verdict be taken upon that one count, the other eight, I am ready to acknowledge, may every one of them be stuffed with the like excrementitious matter in any quantity, yet from that quantity no valid objection to a verdict of guilty can be made.

The copy, or rather extract, which I have succeeded in obtaining, does not furnish me with the means of speaking, with that entire assurance which is afforded by actual inspection of the whole tenor, in relation to any of the nine besides the first. But, in several of these instances, the unbroken thread of the legal custom in this respect, affords an assurance altogether sufficient for the purpose.

At any rate, when a list of these unproved allegations has been seen, as it here will be seen, as contained in the first count, no person, whom it may concern, can find any difficulty in applying the same list to the several other counts.

Here then follows, as taken from the first count, a list, or at any rate what will be found an abundantly sufficient sample, of these unproved allegations, any one of which will have the effect of rendering a verdict of guilty a violation of oath on the part of every juryman who has been concerned in it:—

1. "Being *malicious*, *seditious*, and *ill-disposed* persons." Whether to the persons by whom, — without either proof, or design to offer proof, — dispositions, and if dispositions, habits, and if habits, acts, thus designated, are imputed to others, — whether to these persons the imputations would not apply, with more justice than to those to whom they are thus applied, let any honest man — let any sincere lover of truth, justice, sincerity — declare.

2. "*Maliciously* devising, and intending to raise and excite discontent," and so forth.

3. "With *force and arms*." . . . .

4. "In *contempt* of our said Lord, *the King*." . . . .

5. "Against the *peace* of our said Lord the King" . . . .

Of these allegations, the two last will, it is expected, be found to have been inserted in each one of the eight other counts: if so, then are they, each of them, sufficiently infected with unproved matter, in such sort as to give to the verdict of *guilty*, if pronounced in relation to that one of them, the illegal and immoral quality so often mentioned.

This eventual violation of oath being supposed, let those say whom it may concern — let any juryman say to himself, let the learned judge say to them all for himself — whether, should it, even from the very commencement of the institution of jury-trial, be seen to have

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been the practice of jurymen thus to defile themselves — should it have been the unvaried practice of the judge thus to connive at their defiling themselves, or even to recommend it to them so to defile themselves — whether, even in this case, any member of the present, or any future jury, that sees this, will, in any such habit of defilement, howsoever inveterate, find any sufficient warrant for so defiling himself.

Yes, for argument sake, if, of his so defiling himself, any preponderant advantage to the community, in respect of judicature and substantial justice, would be the result. But, if in any shape any such advantage were to be found to result, it would lie on the defender of the defilement, be he who he may, to bring it to view. Now this is what *has* never yet been so much as attempted to be done; and it seems to me that I risk little, in venturing to assure the reader, that it never *will* be attempted to be done. On that side, if anything be advanced, it will be in the strain of vague generality, and in the form of one or other of those fallacies, of which I have been at the pains of forming a catalogue, which I hope will erelong be published in English, as, in the greater part of it, it has for some time been in French.*

In a certain number of instances, let but the jurymen of this country shew the determination to refuse thus to defile themselves, — not any the smallest difficulty will attend the giving to all instruments of accusation (not to speak of other legal instruments) that shape, which will render it, not only perfectly easy to juries, to declare guilt to have had place, wherever in their opinion it has had place, — to render it perfectly easy (I say) for them so to do, without any such defilement, — but shall even render it much more easy, than it either has been made already by that same defilement, or would or could be made by the like defilement, if swollen to a pitch, ever so much more enormous than it has ever yet been seen to be.

* See the Book of Fallacies, as reprinted in the present collection.

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THE KING

AGAINST

SIR CHARLES WOLSELEY, BARONET,

AND

JOSEPH HARRISON, SCHOOLMASTER,

SET DOWN FOR TRIAL, AT CHESTER,

ON THE 4th OF APRIL 1820.

BRIEF REMARKS,

TENDING TO SHOW

THE UNTENABILITY OF THIS INDICTMENT.

BY JEREMY BENTHAM, ESQ.

BENCHER OF LINCOLN'S INN.

FIRST PUBLISHED IN 1820.

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To the Jurymen of Warwickshire, and such other persons whom it may concern.

Queen's-Square Place, Westminster,
March 29, 1820.

For the purpose of the cause, intituled, *the King against Edmonds and others*, of which it is expected that, before this can reach you, it will have been tried at *Warwick*, copies were sent of the paper which immediately follows [precedes] the present address. Not only in principle, but in so large a proportion of the details, the two cases are in so many points coincident, that, for the present purpose, to draw up a paper, distinct in all its parts from that other, would have been labour without adequate use.

On this present occasion, I proceed, therefore, on the supposition that, by what persons soever any remark of mine, on the subject of the indictment in the case of the King against Wolseley, may be regarded as presenting any claim to their notice, the following [preceding] remarks, which had, for their more immediate object, the *Warwick* case above mentioned, will, in the first place, have been perused. This being supposed to be done, all that will remain will be to subjoin such remarks as apply exclusively to those words and phrases, which have no place but in the *Chester* indictment, by a copy of which they will be preceded.

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THE KING *v.* WOLSELEY & HARRISON.

"MISDEMEANOR.

'COPY OF THE BILL OF INDICTMENT AGAINST SIR CHARLES WOLSELEY AND MR HARRISON.*

"CHESHIRE.—The jurors of our Lord the King upon their oath present, that Sir C. Wolseley, late of Stockport, in the "*city*" [county] of Chester, Bart., and J. Harrison, late of the same place, schoolmaster, being persons of a turbulent [1] and seditious [2] disposition, and wickedly and maliciously [3] devising, and intending to excite tumult [4] and insurrection [5], both in this realm, on the 28th day of June, in the 59th year of the reign of George III. of the United Kingdoms of Great Britain and Ireland, King, at Stockport aforesaid, in the said county, together with divers other persons to the jurors aforesaid unknown, to the number of 500 and upwards, with force and arms [6], unlawfully did assemble and gather together to disturb the public peace [7], and being so assembled together, did, by seditious speeches and discourses [8], and by other unlawful and dishonest means, then and there endeavour to "*invite*" [incite] and stir up the people of this realm to hatred and contempt of the government and constitution thereof, as by law established, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

"And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. W. and J. H., together with divers other persons to the jurors aforesaid unknown, on the same day and year aforesaid, at Stockport aforesaid, in the said county, with force of arms unlawfully did conspire [9], combine, confederate, and agree together to disturb the public peace of this kingdom, and to incite and stir up the people to hatred and contempt of the government and constitution thereof, as by law established, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

"LLOYD, Prosecutor. JOHN HOBNIS.

"THOMAS ROBINSON, High Constable.

"A true copy of an indictment, preferred and found against Sir C. W. Bart., and Joseph Harrison, schoolmaster, at the quarter-sessions holden for the county of Chester, at Knutsford, on Tuesday, the 13th day of July 1819.

"HENRY NOTTS, Clerk of the Peace."

* Reprinted here from the Morning Chronicle of 19th July 1819. The figures are here inserted for the purpose of reference to the REMARKS.

REMARKS ON THE ABOVE INDICTMENT.

TAKING, for their subject, divers words and phrases in the above indictment, these Remarks have, for their principal object, the shewing that, on either of the two counts in that indictment, concurrence in a verdict of guilty would be a violation of the juryman's oath.

1. "*Being persons of a turbulent . . . . disposition.*"] That the pronouncing anything on the *disposition* of the persons in question, whatsoever were the disposition so ascribed, would, as to so much, be the pronouncing a verdict without evidence, has been shown in the Remarks in the *Warwick* case (p. 250.)

On the present occasion, to the ungrounded assertion respecting *disposition* in general, is added, in the first place, the assertion, by which the quality of "*turbulence*" is ascribed to the disposition of the persons thus accused. Here then the jury are called upon to pronounce, that the disposition of the persons accused is, in the instance of each of them, a *turbulent* one. But to do so will be to pronounce them in that respect *guilty*, and *that* without evidence. By the word *turbulence*, no distinctly conceivable *act* is indicated. On the present occasion, if there be anything, of which any distinct indication is afforded by

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this word, it is the sort of temper, and the state of mind, which, on the part of the persons concerned in the prosecution, has place, or is pretended to have place. To whomsoever applied, it is a word of vague vituperation, and nothing more.

2. "*And seditious disposition.*"] Of the word *disposition*, enough has just been seen. *Seditious disposition* is a disposition to commit *acts of sedition*. By the phrase *acts of sedition*, what are the sorts of acts that are, or those that ought to be, understood to be designated?

Presently we shall see this same adjective or epithet, *seditious*, employed to designate certain "speeches and discourses." But the first thing to be considered is the act at large. Sedition? an act of sedition? what sort of an act is it? For, of the phrase — *the act of speaking a seditious speech*, and of the phrase — *the act of publishing a seditious written discourse*, the import will depend on that which is attached to the phrase — *an act of sedition* taken at large. Be this as it may, the idea attached to the word *sedition* being no less obscure and indeterminate, than it is practically important, the consideration of it is here deferred, to the occasion on which it will be seen presenting itself anew, in company with the words *speech* and *discourse*.

3. "*Wickedly and maliciously.*"] Two other words these, which, as here employed, amount to nothing better than another sample of vague and ungrounded vituperation. To these again the remark may therefore be applied, namely, that the imputations conveyed by them not being susceptible of proof, the consequence is, that, supposing a verdict of guilty applied to the count of which they form a part, here would be another violation of the juryman's oath.

Here, too, would recur the question — if, on the ground of the ungroundedly abusive language, *any* person ought to suffer, — on whom, with most propriety, would the suffering be made to fall? — on the persons who are the objects of it, or on the persons who concur in the utterance of it?

But, "*The King*" (says the current maxim) "*can do no wrong.*" No, say the crown-lawyers, "*nor the crown-lawyers neither:*" if not in words, at any rate to every practical effect, such is the addition made to it: what would be *wrong* and *criminal*, if done by any other person, is, wherever they do it, *right* and *legal: right*, though it be for no other reason, than that it is by them that it is done.

4. "*Devising and intending to excite tumult.*"] *Tumult*, forsooth! Behold here another word without any determinate meaning. What is the *criminal intention* imputed here? Answer — the intention of *exciting tumult*. Now what is *tumult?* This is surely among the things which every man ought to be informed of, and informed of in time, before he is punished for any such cause as the "*exciting*" it, or the endeavouring or "*intending*" to excite it. If, for the purpose of forming a ground for punishment, there be any word — any name of an act — that requires to have the import of it fixed by an authoritative definition, surely this one is of the number. But any such definition, where is it to be found? Absolutely nowhere. *The law knows not of any such word:* neither statute law (the only real sort of law,) nor the sort of sham law, commonly called *common law:* in no statute, in no law report, or authoritative law treatise, is any such definition to be found.

No, (says somebody,) nor need there be: for *tumult* is a word belonging to the common stock of the language. Well: and, when employed as an article of that common stock, what then is the import attached to it? Nothing can be more indeterminate. On the slightest scrutiny, this indeterminateness will appear unquestionable: and, to warrant the application of a word to a legal purpose, it suffices not that the *word* be *familiar:* the *idea* attached to it should moreover be *determinate*.

If there be any idea constantly associated with it, it is this — namely, the idea of a something generally *unpleasant* and *undesirable:* that something being a *noise*, in the making of which, a number of persons greater than one are instrumental.

Noise — in the composition of the idea attached to the word *tumult* — *noise*, then, one might venture to state as an essential and indispensable ingredient.

Motion — violent *motion* — of other bodies besides air — motion on the part of a number of persons: — and what number? Would this be another ingredient?

But suppose both ingredients to have had place, — both the ingredients thus designated — would they both together suffice to constitute a punishable offence? No intimation, to any such effect, having as yet been given by any authority, would the ideas thus associated suffice to constitute, for the purpose of punishment, the complex idea of an offence?

In addition to the above ingredients, injury to man's *person* — injury to any subject-matter of man's *property* — immoveable or moveable — injury of either of these descriptions, and in either case injury in any shape, might suffice (it is supposed) — might suffice to constitute such an offence — so that the effect thus given to it were but sufficiently known. But in regard to injury to *person*, still comes the question — would a single person suffice? or shall any and what greater number be requisite? In this case, shall *tumult* be regarded as distinguished — (and by what circumstance or circumstances distinguished?) — from *common assault?*

Whatsoever be their subject-matter and

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their shapes, the injuries commonly regarded as included in the import of the word *tumult* can scarcely be regarded as of a very serious complexion. That which, in this indictment, is brought to view in the character of a punishable crime, is, in the most illustrious periodical publication that ever appeared in any country, considered as to such a degree beneficial, not to say necessary, to good government, that the author of the article in question, the avowed adversary of radical reform, scruples not to employ his endeavours to the avowed purpose of *preventing* the exclusion of it. "Were the causes of tumult destroyed," says the Edinburgh Review, No. 61, p. 198, "elections would no longer be nurseries of political zeal, and instruments for rousing national spirit. The friends of liberty ought rather to view the *turbulence* of the people with indulgence and pardon, powerfully tending to exercise and invigorate their public spirit. *It is not to be extinguished*, but to be rendered safe by countervailing institutions." Not that, in regard to the utility of tumult in any sense of the word, I can bring my own conceptions to anything like a coincidence with the ingenious reviewers.

In addition to the word *tumult*, may be seen included in this same justification the word *turbulence*—another of the words in which the science of the drawer of the indictment has beheld the matter of a punishable crime.

5. *Intending to excite . . . . insurrection.*] Much more serious is the charge now; but still indeterminate,—on the current, and but too well justified supposition, that by the jury, under the direction of the judge, assertion, not only unproved but ungrounded, will, in this as well as so many other instances, be in a way to be regarded as proved,—most conveniently indeterminate.

Insurrection, then? What, on this occasion, for the purpose of their verdict, are the jury—what, for the purpose of their defence, are the defendants—to understand to be meant by it.

"*Insurrection*" *is rising up. Rising up?* for what *purpose?* If against any person or persons, *against* whom? At any rate, in what consists the crime? In the act of *rising up*, there is not any crime; in the act of rising up against this or that *person*, there is not necessarily any crime: for example, not when it is but in self-defence against unlawful aggression. Rising up *against the government?* against the government, for any such purpose as putting down the government? Nothing of all this is said: nothing of all this is charged.

And how happens it that nothing of this is charged? *The government*—was it, on this occasion, out of the penman's thoughts? No such thing; for presently, when *hatred and contempt* are the affections, the excitement of which is alleged to have been intended, government is expressly stated as being the object of them. Why then is it that, when the horrible word *insurrection* is thus brought forward, it is thus hung up over the heads of the defendants—hung up, as it were, in the air, and without any determinate meaning attached to it? Why, unless because somebody was conscious, that neither in that nor in any other criminal sense of the word was *insurrection* intended; nor, therefore, was any intention of producing any such criminal effect capable of being proved. In the insertion of this word, what then was the purpose in view? Once more, only, by influencing the passions, to mislead the judgment of the jury, and cause them to concur in a verdict of guilty, against two men in whose instance no guilt had place. See what is said a little lower down on the subject of seditious speeches.

Now then, no such intention, as that of rising up against government, for the purpose of putting down the government, or for any other and minor purpose—no such intention (suppose) is proved; at the same time, this being numbered among the other words of course—the assertion contained in it being numbered among the assertions, which, though not less plainly false than scandalous, it is customary, because it has been customary, for the jury on their oaths, under the eye of the judge acting under *his* oaths, to declare to be true—suppose it accordingly, in and by the verdict, declared to be true. What is the consequence? That, when the defendants come up for judgment, the judge fancies, or pretends to feel himself in his speech, and in his sentence, not only authorized, but compelled to consider the defendants as *insurgents*—as everything but *traitors*. Not *exactly* as *traitors*: neither the word *traitorously*, nor any of its kin, being in the verdict: but nevertheless as *next kin* to traitors. For now comes in to his aid the sense in which the word with its kindred are so continually employed in the body of the law—employed, not only in all histories, but in all newspapers. The citizens of the United States, ere they became acknowledged citizens—were they not *insurgents*, and insurgent traitors? So likewise the men in Spanish America? In Spain and everywhere else on the continent, *insurgent traitors*; in England, *insurgents* everywhere, and, in the court newspapers, *insurgent traitors*.

6. With *force and arms.*] Nothing can here be plainer than the existence of an allegation, that, in the course of the acts done in prosecution of the criminal *intentions* alleged and for the purpose of giving effect to those same intentions, *force and arms*—not only *force* but *arms*—were employed. Well then, if on that same occasion, neither *force* nor *arms* are proved to have been employed,—or even, though force were proved to have

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been employed, if no *arms* are proved to have been employed, no verdict in and by which they are declared to have been employed can be concurred in, without a violation of the juryman's oath. So likewise, though *arms* were proved to have been *borne*, if no *force* is proved to have been *employed*.

Now as to *arms*, what, in the sense that belongs to the subject, *arms* are — is pretty well understood by everybody. Arms are either *offensive* or *defensive:* and, in either case, to help to constitute the alleged guilt, they must not merely be such arms as are customarily carried for the purpose of being eventually employed against assault by beasts, but such arms as by their construction appear designed to be employed against men.

7. *To disturb the public peace*] "unlawfully" and "to disturb the public peace:" it was to this intent that they "*did assemble and gather together*," says this part of the charge.

Disturb the public peace? Once more, if not by injury, or endeavour to do injury, to *person* or *property*, by persons acting together for this same purpose, in considerable numbers, the public peace was endeavoured or intended to be disturbed, by what other means— in what other mode, could it have been endeavoured or intended to be disturbed; or in this case, to the words, *disturb the public peace*, what other determinate and intelligible import is left? If, then, neither injury, nor endeavour nor intention to do injury, in either of those modes, is proved, here there is another ungrounded assertion by the adoption of which the juryman's oath would be violated. But, even suppose injury in both modes proved, still would a verdict of *not guilty* be warranted, though it were upon this single ground. Why? Even because, for want of those same determinate expressions, or what is equivalent to them, the defendants have been deprived of that precise information, which was necessary to furnish them, in case of innocence, with the sufficient means of defence against this part of the charge. *Disturbance of the public peace* is not plain language, but rhetoric — rhetoric, which, for the purposes of deception and injustice, has been, as it was originally inserted, so is it still kept, in the body of the language employed by lawyers.

Eminently useful has indeed the word *peace* been, to those who, in that course of perpetual encroachment, which limited power, in whatever hands, is destined to pursue, are waging their never-ceasing war against liberty.

Though, in its original import, this word was far from being so determinate as those which the subject required, and, as above, might have found, — it was still farther from including one important point which in these later times has been forced into it.

In its original and proper signification, it belonged to *international* law only, not to *internal* law. Peace is the absence of war; and, if it be applicable to injury between members of the same state, it could only be on the supposition of a civil war, such as that between two pretenders to the monarchy, or that between a monarch and his aristocratical subordinates: of that sort of civil war from which, in those feudal times, in which most of our institutions took their rise, the country was seldom free, except when relieved from it by a war of depredation, in which all parties joined, for the sake of the plunder hoped to be obtained from France.*

Injury to *person*, to *properties*, to *reputation*, to *condition in life*, — to one or other of the four shapes expressed by these denominations, may all injury, considered in so far as individuals are the objects of it, be seen to be reducible. That which, as between monarch and monarch, would be signified by the words *breach of the peace* — that, and nothing else, would be signified by that same phrase, when applied to injury as from individual to individual in the same state, or from subjects to rulers in the same state: that is to say, injury to person or property, when accompanied with physical force, — or with the appearance of it, in any such shape as should produce fear of ulterior injury, in one or both of the shapes thus signified.

In either of these cases, a measure obviously conducive, and in some circumstances even necessary, to prevention of ulterior injury, is the bodily arrestation of the evil-doer, and, for a time, more or less considerable, the

* Through the French *paix*, *peace* comes from the Latin *pax*. *Pax* has for its grammatical kindred, *pactum*, a treaty or agreement. Among the most ancient, and therefore the wisest, of those ancients, whose sentiments and conduct, by the phrase, *wise ancients*, we are so frequently called upon to take for the model of our own, war for the purpose of extermination, with no other softening than was prescribed by the profit of enslavement, was the natural situation of those same wise nations, with reference to all other nations: which other nations, in consideration of their deficiency in the article of wisdom, were lumped together under the general denomination of *barbarians*. At the same time, in case of a special agreement, or treaty of peace, entered into for that purpose, any nation in particular might stand exempted from that fate to which, but for such special exception, it was doomed. Accordingly, among the Greeks, by two correspondent and single-worded denominations, expressive of the absence and presence of this circumstance of exception, barbarians were distinguished into those, between which respectively and the wise nation, *peace*, meaning by peace *treaty*, had place, and those with whom no such peace had place; and among the Romans, though it appears not that the two appropriate terms had received translation into their language, the sentiments in question were very efficiently and frequently conformed to in practice.

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subjecting him to ulterior bodily restraint. Were it not for a power to this effect somewhere, no one could say, to what extent injury, in the two shapes here in question, might not swell itself.

As between monarch and monarch, so between individual and individual, it is only by injury to the persons or properties of men, not by mere injury to their reputation or condition in life, that except of late, and in prosecution of the above-mentioned implacable internal war of the ruling few against the subject many, that peace has ever been considered as being *broken* or *disturbed*.

With or without commission from the king of Great Britain, suppose a Spanish captured by a British ship, and men in the ship killed or wounded: here is *disturbance* of the *peace*, here is *breach* of the *peace*. Thus stands the matter, so far as regards injury to person and injury to property. Now as to injury to reputation. At this time, scarcely does that day pass, in which the reputation of the Spanish monarch does not receive its figurative wounds by the instrumentality of the public prints; yet by none of those figurative wounds is peace between Spain and England either broken or disturbed.

Still, in the import of the word *peace*, there was nevertheless something of a loose and figurative cast, which, by the enemies of the liberty of the press, was regarded as affording a colour applicable to their purpose.

Already, to every written and published discourse, which it was their wish to suppress or punish for, they had succeeded in affixing the character of a criminal and punishable *libel;* and, on the part of the people, they had found either a stock of prejudice, or a degree of blindness and negligence, sufficient to produce submission to the injury. But, to punish a man for an alleged libel, and thereupon to suppress it, after it had been proved or pretended to have been proved such, was one thing: under the notice of his having published a libel, to punish a man for the publication of a written discourse, and to suppress the discourse, before it had been proved, or so much as pretended to have been proved, a libel, was another and a very different thing. This, however, they have been seen to do; and, in the word *peace*, with the cloud in which it still continues so unhappily involved, they found a pretext, such as by them was deemed, and as yet has been found, a sufficient one.

Still, however, the phrases, *disturbance of the peace — breach of the peace*, were not of themselves regarded as sufficient: the idea of *tendency* was still requisite; to the phrase, "*a breach of the peace*," the words, *tending to*, were added, and thus the thing was done.

Tend to a breach of the peace? In what manner, by what means, is it, that a libel, of the sort here in question — a libel, tending to incite and point against the person or persons in question sentiments of displeasure, tends to a breach of the peace? Upon these or any other persons, such, it is true, may be the effect of injury in this shape, just as it may be the effect of injury in any other shape. For, there is no injury by which a man, weak in mind and strong in body, may not be engaged to make retribution for it, by means of injury, in some shape or other, of the sort of those by which *peace*, in the original, determinate, and proper import of the word, is *broken or disturbed*.

But, let this be law, every act, by which any man may be made angry, is a breach of the peace: and thus, between acts which *are* breaches of the peace, and acts, injurious or not, that are *not* breaches of the peace, all difference is expunged.

Thus, then, so it is, that, let the law be but uniformly carried into effect, all liberty of discussion on the subject of those affairs which are the common concerns of all men, is rooted out — all by so sweet and soft an instrument as the word *peace*, issuing from the lips of the reverend, and scarcely the less pious for the not having as yet been supernaturally consecrated, ministers of peace.

A man defiles your wife before your face. This, if it be with the consent of the person so defiled — this, though it suffices to acquit you of murder, in case of your avenging the injury by the death of the injurer upon the spot, has not yet been discovered, either to be a breach of the peace, or to have any tendency to produce to any such effect as that in question — to any such effect as that of arrestation on the spot, and at the time, any such thing as a breach of the peace. The reason is plain: here is no libel published. Not but that it is among those injuries, which "*by intendment of law*" — meaning always English law — are never committed without "*force and arms*." But, in this case, the force and the arms being but the product of mendacity and nonsense under the garb of science, neither breach of the peace, nor so much as tendency to any breach of the peace, is among the imputed accompaniments of it.

Thus it is, that, with words at command, the nominally independent, but really dependent, creatures of the crown, continue to have, as they always have had, but for here and there an act of perversity on the part of juries, at equally absolute command, the life of man, as well as everything from which life derives its value: and, so it be by a man with justice in his mouth, and a certain quantity of fur and false hair flowing over his shoulders, how they are dealt with has, to the good people of this country, been, at all times, a matter of little less than complete indifference.

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8. *By seditious speeches and discourses.*] Now, then, as to *sedition*. In this clause, by which the jury are called upon to pronounce the defendants guilty of an alleged crime thus denominated, ought to be considered as of course included, the supposition that to every one in their situation it had been rendered possible to know and understand — to know and understand in time — what the sort of acts are, to which the appellation is applied, and from which, if committed, the penal consequences attached to it will be made to fall upon the actors.

But, in this instance, as in so many others, no such possibility, it will be seen, has place.

In this instance, as in every other, what the possessors of power have in view and at heart, is — under the name of *punishment*, to cause suffering to fall upon any such persons, to whom it shall have happened to have offered *opposition* in any shape to their *will* — determined, as it is, by the conception entertained by them of their own interest.

Now, by the word *sedition*, what is it then that is expressed? *Opposition*, in some shape or other, to that will: *this*, and little more, if anything: at any rate, nothing, the shape of which can be said to approach in any degree to a determinate shape.

Look for the meaning of it in statute law: look for it in common law: look for it as long as you will in both, you will look in vain.

As to the word *sedition*, in statute law it may unquestionably be found in places more than one. But, in each place, for the import that will be attached to it, reliance is placed on the import, whatsoever it may be, which by each reader shall happen to be attached to it. Unfortunately, various as well as numerous are the imports which, with almost equal pretension to propriety, may present themselves as attached to it; imports correspondent to which are so many species of mischievous acts, differing widely from one another in quality and quantity of mischievousness. A sample may, perhaps, be brought to view before these pages are at an end.

Now, of the immense and undigested mass of statute law, in what portion will any exposition — any attempt to give an explanation and fixation — of the import of this important word be found? In the instance of this, as well as almost every other denomination of offence, nowhere. In the manufacturing of this species of law, no man ever scruples to assume, and to any extent, those things to be universally known and understood by everybody, the possibility of knowing and understanding which has not been allowed to anybody. To the manufacturers, the very idea of definition is an object of a not altogether ill-grounded horror — of real horror — and therefore, to escape from the indignation due to such neglect of duty, of affected contempt: — *absurd, pedantic*, wild, visionary, and impracticable — such are the epithets kept in store to be poured down upon the head of every presumptuous innovator, whose audacity shall dare to propose the extending, to this most important of all sciences, that instrument of elucidation, which is never regarded as being misapplied, when applied to the most trivial, be they what they may, of the several other branches of art and science.

Lastly, as to *common, alias judge-made* law. Not that the definitions, which occur here and there, in the books called *books of common law*, are, any of them, possessed of any binding force, or authority: to each such exposition, whether repeated as having been given by a judge speaking as such, or exhibited by an unofficial and uncommissioned treatise-maker, each succeeding judge, on each occasion, bestows such regard, and no other, as it happens to him to find his convenience in bestowing: for nothing can he ever see, that, if so determined, can have any such effect as that of restraining him from the freest exercise of such his pleasure. Still, however, in such expositions, definitions, exemplifications, and illustrations, as are to be found in law-books, a man who is rich enough to possess a law library of adequate magnitude, and at the same time has leisure enough to make this use of it, may, in most cases, find some guide to reflection — some help to conjecture.

Accordingly, in books of *common law*, words may here and there be found, which have been taken for the subject of declared definition. Examples are — the words, *high treason, riot, rout, and unlawful assembly:* not to speak of others which have no immediate bearing upon the present subject.

But, in the number of them, the word *sedition* is not to be found. On the present occasion, besides indexes to statute books, *Hawkins*, the latest of the authors of crown law-books, who can with any confidence be cited as authority, has on this occasion been recurred to, and in vain.

Such is the case with regard to the word *sedition:* such is moreover the case with the still more appalling word *insurrection*.

Between sedition and high treason — between a crime punishable with nothing beyond fine and imprisonment, and a crime subjecting men to an excruciating death, with *et-ceteras*, punishing with elaborate reflection the unnumbered innocent along with the guilty one — where is the difference? Nobody has ever told us: nobody has ever attempted to tell us: nobody is there who is able to tell us. For one and the same individual act or series of acts, for which a man is prosecuted as for high treason, if the cognizance of it is thought fit to be trusted to a

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jury, and of the evidence of two witnesses, or a body of other evidence construed to be equivalent to it, can be found, — for the same offence, he has been made prosecutable, and accordingly prosecuted, as for *sedition*, and, by a single justice of peace, convictable and convicted on the testimony of a single witness (36 G. III. c. 7.)

But between these, as compared with one another, and as compared with such other offences as strike against the authority of the government, is it possible to draw any clear lines of distinction? Oh yes; abundantly possible. *Actuality*, it is hoped, may be received as tolerably satisfactory evidence of *possibility:* and this evidence would here be produced, were it not that space and time press, and that, on the present occasion, any such sample might, by those whom it concerns, be regarded as uncalled for and irrelevant.

Look at that statute. Every act, in the nature of which any real mischievousness is included, is expressly declared to be high treason; — every act, which is allowed to be punished with the less atrocious punishment, as above, is the act of criticising, in terms displeasing to the members of government, anything that, at any time, has ever been done by government. And, forasmuch as, in the preamble, in company with the words *high treason*, the word *sedition* is inserted, what is said about "hatred and contempt," as above, *i. e.* about unacceptable criticism, may, by any one that chooses, be taken as a definition of it. To convict a man even of high treason on as good ground, would not require a construction more intensely strained, than some of those by which, in addition to the treasons created by parliament, new ones have been created by judges.

Mr. Hunt, and his associates — on a late occasion, were not endeavours used to send the knife of the hangman into their bowels? Yes, — and for what offence? For one of those offences which are between *high treason* and nothing: the one or the other, according as audacity or timidity are the accompaniments of despotism.

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OFFICIAL APTITUDE MAXIMIZED;

EXPENSE MINIMIZED:

AS SHOWN IN

THE SEVERAL PAPERS COMPRISED IN THIS VOLUME.

BY JEREMY BENTHAM.

FIRST PUBLISHED IN 1830.

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PAPER I.—PREFACE.

To the whole of the matter, which, under nine or ten different heads,* is now, in the compass of one and the same volume, published under the same general title,—belongs one and the same design, and, it is believed, one and the same result. But, it being composed of no fewer than (besides this) nine different papers, published mostly at different times, on different occasions, and under titles by which no intimation of such unity of design is conveyed,—it has occurred that that design may in no small degree be promoted, by holding up to view, in this preface, the way in which they are regarded as being respectively conducive and contributory to it.

The work, from which they take their common origin, was an all-embracing system of proposed constitutional law, for the use of all nations professing liberal opinions: volumes, three; the first of which, after having been some years out of the press, is at this time now first published. Of this work, a main occupation was, of course, the showing by what means the several members of the official establishment—in other words, the public functionaries, of the aggregate body of whom, what is called the *government* is composed—might be rendered, in the highest degree well qualified, for rendering to the whole community the several services which are or ought to be looked for at their hands: or say, for giving fulfilment to that, which is or ought to be the end of their institution:—namely, the maximization of the happiness of the whole community under consideration.

In any one of these forms of words, may be seen expressed the whole of the benefit in view.

But, in the very nature of the case, connected with this *benefit*, is a *burthen*, without which the attainment of this same benefit is, in all places, and at all times, utterly impossible. Of this burthen, the principal and most prominent part, being of a pecuniary nature, is designated and presented to view by the word *expense*.

Hence it is—that, with the object designated by the words *official aptitude*, becomes inseparably associated the object designated by the word *expense*.

Of whatsoever *benefit* comes to be established, the *net* amount will be—that which remains after deduction made of the amount of the *burthen*.

A notion, which, in the course of this inquiry, whether really entertained or no, I had the mortification of seeing but too extensively endeavoured to be inculcated, was—that the net amount of the benefit reaped would, in this case, increase, and as of course, with the amount of the burthen imposed: and—to speak more particularly, that the aptitude of official men for their several situations would, in a manner of course, receive increase with, and with every practicable degree of exactness in proportion to, the expense employed in engaging them to enter upon, and continue in, their respective situations.

On the contrary, for my own part, the more closely I looked into the matter, the more thoroughly did I become persuaded—not only that this opinion is erroneous, but that the exact reverse of it is the real state of the case.

In regard to each of these so intimately connected objects—maximization of official aptitude, and minimization of official expense—to show by what means the best promise of the obtainment of them might be afforded, was of course an object of my inquiries. From the words *official aptitude maximized, expense minimized*—from these five words might this design receive its expression: and, of the design or purpose of this work, might intimation be thus afforded by its title. But, in addition to *this*, a further idea, which it is my wish to see associated with these words, is—that of these two states of things—these two mutually concomitantly desirable objects—one bears to the other the relation of *cause* to *effect*; for, that from the same arrangement from which the expense so employed will *experience diminution*, the aptitude in question will, in the natural order of things, *receive increase*: in a word, that, *cæteris paribus*, the less the expense so bestowed as above, the greater, not the lesser, will be the aptitude.

* Since this Preface was committed to the press, some change having been made in the list of the Papers originally intended to be inserted; hence some uncertainty and mis-statement in the *numerical* designation of them. But as, by reference to the list of contents, things may be set right, the benefit of correction would not (it has been thought) pay for the trouble. [The changes appear to consist in the insertion of "Supplement to the Extract" as Paper IV.; the transference of the Paper "On Public Account-Keeping," from No. VIII. to No. X.; and the transposition of what were formerly Nos. IV. V. and VI. to Nos. V. VI. and VIII. respectively.—*Ed.*]

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Now for the painful part of this inquiry: —

Never, to any subject-matter,—considered as a source of happiness or unhappiness, or both,—have my labours on any occasion been directed, but with a view to the giving increase to the net amount of happiness. But, so intimately blended and intermingled, throughout the whole field, are those two fruits of human action, — never could the sweet be brought to view, but the bitter would come into view along with it: and, as the sweet would, in great measure, come into view and be reaped without effort, — the consequence was, that in clearing away the bitter consisted the great part of the labour necessary to be employed. In such part of the field, — for obtaining, of the *bitter* — in a word, of the unhappiness — produced by deficiency in the aptitude — a perception sufficient to put me in search after the most effectual mode of supplying that same deficiency,—a very slight glance would commonly suffice. But, this object accomplished, then has come the task of showing the needfulness of the research that had been made: showing this, by showing the bitterness of the fruit with which the whole field was overrun, and the magnitude of the evil, actually and continually coming into existence, from the want of the supposed discovered appropriate and effectual remedy.

Painful (I may truly say) has, on every occasion, been this part of my task: for, never has it happened to me to witness suffering, on the part of any creature, whether of my own species or any other, without experiencing, in some degree or other, a sensation of the like nature in my own nerves: still less possible has it been to me to avoid experiencing the like unpleasant situation, when it has happened to myself to have been contributory to that same suffering.

Yet, without bringing to view the evil, — utterly incomplete would have been the good, produced by the invention and description given of the remedy: for, by all those, whosoever they were, by whom, for the sake of the benefit derived by them from the evil, the existence of the evil would of course be denied, and their endeavours applied to the keeping it out of view, — correspondent ill-will, harboured towards those by whom this source of the good* is endeavoured to be dried up, is a necessary consequence.

Here, then, in connexion with every particle of the good endeavoured and supposed to be done, — come *three* distinguishable particles of evil: evil, from the contemplation of the suffering endeavoured to be prevented, evil, from the contemplation of the suffering producible, on the part of the evil-doer, by the application made of the remedy; evil, apprehended from the desire of vengeance, produced, in the mind of the evil-doer, by the loss of his accustomed benefit.

Happily, it follows not in this case, that, because the particles of evil bear in number to those of the good the ratio of three to one, they must in the aggregate be superior in value to the good. Happily: for, if such were the consequence, — scarcely where, between man and man, contention had place, would good to any net amount be ever produced.

Moreover, a few hints there are, to which, coupling together two considerations, namely, that of the extent of their usefulness, if any they have, and the narrowness of the space into which they may be compressed, I could not refuse admittance: and, for such admittance, no other place than the present could be chosen with any advantage.

Disappointment-prevention, or say *non-disappointment*, principle. For the purpose of *retro-susception*, or say *resumption*, as well as for that of original distribution,—in this principle may be seen the chief and all-directing guide. In this may be seen, on the ground of utility and reason, the foundation of the whole law of property, *penal* branch as well as *civil*. In another place,* application has already been made of it, to the subject of what is called *real property*: — and thereby explanation given of it. In the present volume may be seen ulterior application made of it, and explanation given to it: namely, in the immediately ensuing paper, intituled *Introductory View*.

In the train of it come now a few proposed rules and observations:—

1. — Rule I. So long as expenditure continues running through any pipe or channel, which can be stopped without production of disappointment — disappointment to *fixed* expectations already formed, — forbear to stop it, in any pipe or channel by the stoppage of which such disappointment will be produced.

2. — Rule II. On this occasion, by appropriate delineation draw a clear and express line of demarcation between *fixed* and *floating* expectations.

Every solicitor, who sends a son of his to one of the inns of court, *expects* to see that same son on the chancery bench with the seals before him; as the Lord Bathurst, of Queen Ann's creation, saw his. Behold here a specimen of *floating* expectations: correspondent to *fixed expectations* in ordinary language, are *vested interests* in technical language.

3. — Rule III. The amount of the sum proposed to be *retrenched* being given, and the amount of suffering of every sufferer by it being the same, the less the number of the sufferers by it the better.

* Viz. "of the good," or "benefit" to "the evil-doer?"—*Ed.*

* *Another place.*] — Westminster Review for 1826, No. XII.

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Application. — Case supposed: in the department in question, mass of expenditure proposed to be retrenched, £1000 a-year: one sum of £1000 a-year forms the salary of *one commissioner* of a board: another sum of £1000 a-year, the aggregate of the salaries of *ten clerks.* These situations, all eleven of them, are, on examination, deemed needless: but, without production of disappointment, they cannot, any one of them, be struck off. Direction in consequence: strike off the one commissioner, rather than the ten clerks, or any one or more of them.

4. — Rule IV. Remember always, — that, on both sides, the amount of the provision probably obtainable by each such dismissed functionary, in lieu of what he thus loses, requires to be taken into consideration.

5. Example of a channel of expenditure capable of being stopped up, without disappointment of fixed expectation, this: namely, salaries of the ostentatious class of functionaries sent on *foreign missions;* secretaries of legation, consuls, and vice-consuls, not included. Offers of service at reduced salaries to every diversity of amount — offers of gratuitous services, not to speak of offers of purchase — let all such offers be called for and received, before choice is made. Of purchase? Yes. For, if a fit man there be, who, instead of being paid for taking upon him the burthen, is willing to pay for the permission to bear it, — why, even against any such offer, should the door be closed?

As to the general indication afforded, of aptitude for a political situation, by the proof given of *relish* for it by the smallness of the sum required for taking it, or the largeness of the sum ready to be given for it, — see on this head what is said in Paper III. *Extract from the Constitutional Code.*

6. Note, that — by striking out any individual, in whose instance *fixed* expectation, either of *continuance* in possession, or of *acquisition* of possession, has place, — nothing is gained, upon the whole, by the community of which he forms a part. Not more is the community thus benefited, — than, by the removal of a weight from one side of a ship to another, the ship is lightened.

7. As often as, at the public expense, money is given in the name of *indemnification,* complete or incomplete, for loss sustained by him without his default, — so often is acted upon a principle, the reverse of that which would produce the disappointment of a fixed expectation, by the uncompensated extinction of a profit-yielding office.

To apply this observation to the matter of the present volume. In the three* first of these papers will be seen nearly the whole of the *sweet* part of the compound task: in the four next will be seen predominating the bitter. The first thing done will consist accordingly in laying down, all along, what, in my view of it, is *right;* that, to this, as a standard, for the purpose of detection and exposure, may all along be applied that which, in my view, is *wrong.*

As to the ninth of these papers, — of the subject of it (the *militia*) the extent is comparatively narrow, — and the relation of it to the rest must wait for its explanation till some other matters have been brought to view.

Occupied principally in showing how the aptitude in question *may* be maximized and the expense minimized, and that, by every diminution effected in the expense, augmentation may be given to the aptitude — are the three first and the eighth† of the ensuing papers: occupied in showing that in fact, on the part of the rulers of the British empire in its whole vast mass, and of the English part in particular of them, the endeavour has been, and continues to be, and so long as the form of government continues to be as it is, never can cease to be — to maximize the expense and minimize the aptitude — occupied in the establishment of this position, are the remaining numbers; that is to say, the 4th, 5th, 6th, and 7th‡ of these same papers.

Specially connected with one another will be seen to be Papers 4th and 5th;‖ mutually connected in like manner with one another, Papers 6th and 7th.¶

In Papers 4th and 5th, may be seen occupied the leading minds of the two parties between which the statesmen of those days respectively were divided, years 1780 and 1810, — occupied in the endeavour to obtain the approbation of the community, for principles, by which, if carried into practice, not an atom of the fruits of human labour over and above what is necessary to bare existence, would be left in the hands by the labour of which it was produced. So much for principles: — or, if another word be more agreeable, *theory.*

In Papers 6th and 7th,¶ may be seen — with what consummate consistency and perfection those same principles have been, and down to the present time continue to be, carried into practice: to how enormous and endless an amount has been swelled the mass of expense, employed under the notion of securing appropriate aptitude on the part of the head functionary in one of the departments; namely, in that of *justice;* — and the degree of perfection, in which, in that same instance, the quality of *inaptitude* has had place: and how effectual the provision that has been made, for addition altogether boundless to that same expense. Moreover, in Paper 7th may be seen — how, by the head functionary in another

* Four — *vide supra,* p. 265, Note * — *Ed.*

† The four first, and the tenth, ib. — *Ed.*
‡ 5th, 6th, 7th, and 8th, ib.
‖ 5th and 6th, ib. ¶ 7th and 8th, ib.

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department, namely, that of the home-affairs — not only was support given to the system of predatory exaction, and thereby of expense, just mentioned, — and to the continuance of the official inaptitude also just mentioned, — but in his own department an addition, with (it is believed) unexampled wantonness, made, to the expense of offices subordinate to his own, and thereby to his own emolument; coupled with the inexorable establishment of a set of regulations, having for their most obvious and incontestable effect, not to say their avowed object, the exclusion of every efficient cause, and assignable presumptive proof, of official appropriate aptitude. Sole qualification required, eating and drinking; qualification decidedly rejected — of the several powers belonging to the very office in question, the habitual exercise.

Thus then may be seen — not only unrestricted, but by every day's practice continually confirmed and acted upon, — the theory to which expression may be given by the words — *official expense and official inaptitude both maximized.*

When, in the career indicated by the words *expense maximized — aptitude minimized*, the ruling powers have proceeded for a certain length of time, — it will sometimes happen — that, by the fear of seeing their power drop from under them, they will be induced to stop; and even not simply to make a *stand*, but actually to make a *retreat;* and that this retreat, when applied to expense, will be declared under the name of *retrenchment.*

All this while, the original opposite design — the design of advancing in that same career — continues, of course, in unabated force. For, the same cause which first gave birth to it, will, so long as man is man, make it grow with his growth, and strengthen with his strength. The design, however, not being altogether so acceptable to the people at whose expense, as it is to their rulers by whom, it is entertained and pursued, — hence the endeavour to impress on the minds of the people — instead of the apprehension of its existence — the opposite confidence. But, such is the force of truth, and of the nature of things, that whenever a design of this sort really has place, so it is that, by means of the very endeavours employed to dispel the apprehension of it, it is liable to be brought to light.

Whether, in the several instances of Edmund Burke and George Rose, this result has not had its exemplification, — is among the questions, on which the reader will have to pronounce, should his patience have carried him through papers the 4th and 5th.*

Not unfrequently, those who, by delusive arguments, are labouring to inculcate an erroneous opinion, have, by those same or some other considerations, been themselves involved in the like delusion; such is the influence exercised on the judgment by the affections. In the mind of George Rose, the existence of the power of self-deceit, in quantity more or less considerable, presented itself to me (I remember) as not improbable: in the mind of Edmund Burke, not a particle. In the mind of George Rose (means for observation not being wanting) there seemed to me to be no small portion of downright honesty and goodness of intention; in that of Edmund Burke, nothing better than matchless artifice.

To return to the subject of *retrenchment.* Just now, a show of a design of this sort having been made, and in that track even some short steps taken, — among the topics, for sometime proposed to be included in this miscellany, was that of *retrenchment.* But, after some progress made in relation to it, came into view, what ought to have presented itself from the first; namely, that the field of *retrenchment* is no other than the whole field of *expenditure:* the only difference being — that the points of view, in which that same field has to be contemplated, are, on the two occasions, opposite. This being borne in mind, time and space were seen joining in putting a peremptory *veto* upon any regular progress in that track: any progress, presenting, upon the face of it, any pretension to the character of a comprehensive one.

Seeing, however, as above, one supposed proper seat and source of retrenchment — the *militia*, in relation to which what had occurred to me had already assumed a determinate shape, — the quantity of space occupied by it being but small, admittance (it seemed) need not be refused to it. It forms accordingly the matter of paper 9th.

8. What is the *navy* good for? Answer — to help to defend colonies. What are *colonies* good for? Answer — to help to support the *navy.* *Quere*, what part of the national expenditure is kept up on the ground of this circle?

9. On the question — by the metropolitan country shall this or that distant dependency be kept up? — there are two *sides* — two *interests* — that require consideration: that of the metropolis herself and that of the dependency. To *Great Britain and Ireland* — say in one word to *Brithibernia* — would it be matter of advantage or disadvantage to surrender the dominion of *British India* to the inhabitants, as it surrendered to the inhabitants the dominion of the new Anglo-American United States? On the question whether it would be for the advantage of *Brithibernia*, much might be said on both sides. On the question, as applied to the nation of British India, — in the minds of those who have read the documents, and in particular the work of the so well-informed, intelligent, and incon-

* 5th and 6th — *vide supra*, p. 265, Note * — *Ed.*

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testably well-intentioned Bishop Heber, — scarcely can there be a doubt. By the withdrawal of the English regiments from British India, in what respect or degree would Hindoos or Mahometans profit? Answer — in much the same as did the ancient *Britons* by the withdrawal of the *Roman* legions.

10. If, in the case of the several European powers, and other civilized nations and governments, security against *one another* were all that were sought for, at the hands of *standing armies* and *permanent navies*, — no less effectually might this security be procured and retained, by proportional *diminution* than by proportional *augmentation*. But, by all of them, permanent military force, in one or both branches, whether needed or not, is prized at any rate as an instrument of security for themselves against their own subjects: security by means of intimidation: and security by means of delusive show and corruptive influence.

11. Now for *dead-weight*. After having so much too long had its *habitation*, it has at length received its *name*. It was on the shoulders of the good woman who used to figure upon a halfpenny, *a wen*, or a *millstone* about her neck: either emblem may serve. But should the first be preferred, let not *imagination* take place of reason, — and, turning her back on the herein-above-proposed non-disappointment principle, — go on to say, *immedicabile vulnus ense recidendum est*.

12. Millstone or wen — it is among the blessings for which Brithibernia stands indebted to *Matchless Constitution*. In the Anglo-American United States, no such excrescence is known. Pensions, in compensation for wounds received, — and thence for the encouragement necessary to the engaging of men to expose themselves to such casualties, — Yes. But, pensions of retreat, — pensions for widows or orphans, remuneration mis-seated or extravasated,—in these or any other shapes, — none. As to extravasated remuneration, see Paper III. *Extract from Constitutional Code*.*

13. Exactly as necessary, exactly as reasonable, are pensions of retreat, et cætera, at public expense, for official men, — as for professional men they would be, or for artists, or for tradesmen, or for labouring men engaged in any other profit-seeking occupations.

14. Once upon a time, — in the senate-house of Gotham — a motion was made, to impose upon everybody a tax, and put the whole produce of it into everybody's pocket. Hear him! hear him! hear him! was the cry. The motion passed by general acclamation. *Quere*, of the Gotham senate-house what was the distance from St. Stephen's?

15. Account to be taken. Account of the annual amount per head, of an average pauper on the aristocratical pauper-list called the dead-weight, in each of its several classes, from the £50 a-year class to the £4000 a-year class inclusive, compared with the expense of the democratical pauper-list called the *poor rates*. Quere, how much longer will the real poor — the vast majority of the community — endure to see five hundred times as much thus bestowed upon one of their *betters* (and such betters!) as is bestowed upon one of themselves?

One of these days, two comparative accounts will be made up by authority; one, of the expense bestowed upon the democratical class of paupers; the other, of the expense bestowed upon the aristocratical. How much, if anything, does the aggregate of the last-mentioned expense fall short of that of the former? Next to nothing. Think too of the length of *time*, taken by the one and the other, for arrival at their present magnitude. Calculate the length of time, at the end of which, while the democratical continues stationary, the aristocratical pauper-list will have outrun the interest of the national debt, as much as that same interest has outrun the annual sum applied to the maintenance of government!

Look at him! there he sits! prince of the aristocratical pauper-list, at this moment! Conservator of everything that is evil! implacable enemy of every new thing that is good! Loaded with the spoils — of the injured, the afflicted, the helpless, the orphan, and the widow!

What is the number of clerks, who, after any number of years' faithful service, would not, with less compunction, be turned a-drift penniless, than this man deprived of the addition thus made to so many hundred thousand pounds, accumulated by the delay, sale, and denial of justice;† by disturbing the peace,

* *Mis-seated and extravasated.*] To men conversant in the medical branch of art-and-science, the use and importance of *nosology* is no secret. Be the disorder what it may, — to it how can any cure, under it how can any relief, be administered, — unless it be *spoken* of? And, how can it be spoken of with best effect, unless a name, and that an appropriate and characteristic one, be given to it? As little to the practitioners in the body politic is this a secret, as to those in the body natural. But, under *matchless* constitution, the practitioners — having and being actuated by an interest at daggers-drawn with that of the patient, — hence every idea and every expression, which contributes to throw light on the nature of the disorder, is, in proportion to the strength and clearness of that light, necessarily and uniformly odious: hence the endeavours to cause it to be regarded as ridiculous.

† Mode of connexion between official service and official remuneration. In the character of a *Supplement* to the section, on Official Remuneration, as reprinted in the extract from the Constitutional Code, — matter under this head has for some time past been collecting. But, no great progress in it had been made, when the observa-

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for the purpose of plundering the property, of families;—by setting children against parents, and parents against children;—by giving, of his own single authority, origination, execution, and effect, to institutions so shockingly immoral, that neither he nor any other man in his place, would have dared so much as attempt to introduce the proposal of them into either House of Parliament?

Of one of the states of things, held up to view in and by the *Defence of Economy against Burke*, namely, the state of the crown-lands, a curious enough and highly instructive application may be made to the now existing state of things in the same quarter, as brought to light in and by the admirable speech so lately made in the Honourable House, by Mr. *Whittle Harvey*. Estimated annual value of the crown-lands obtained by *Somers* when Lord Chancellor, for his own use, year the 7th William the Third, A.D. 1695, or thereabouts, £2100 per annum. Of what remained after this grant,—produce, upon an average of fifteen years ending in 1715, £1500 a-year, and no more; according to Mr. Secretary Rose's pamphlet, intituled "*Observations respecting the Public Expenditure and the Influence of the Crown*, 2*d edit.* 1810." Of the present remnant of that same remnant, annual value, according to various estimates, made by va-

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tion was also made, that *this* is but one modification of the manner of bringing into coincidence the line of conduct prescribed by private interest, and that prescribed by public duty: and that—to complete the problem, what was requisite was the establishing the correspondent closeness of connexion between maleficence on the one part, and punishment on the other part:—punishment, together with the several other *remedies*, which the nature of things admits of:—namely, satisfactive, suppressive, and preventive. Desirable and requisite is this coincidence in the case of official men,—true: but not more so than in the case of all other persons whatsoever.

These things observed, what was further observed was—on the other part, that the head to which this disquisition belongs is that of *nomography* in general. But, in the collection of matter under this head, considerable progress had been already made. The art-and-science of clothing, in the best adapted form, the several modes of giving expression to the dictates of the *will*, may be considered as a hitherto unobserved branch of *logic*: the branch of art-and-science as yet designated by the name of *logic*, being, as to its subject-matter, confined to the dictates of the *understanding*—a faculty not exactly the same with the *will*, though not far distant from it.

Nomography—(from a Greek word which signifies *law*, and another which signifies *to write*, or say, *give expression to*)—is an appellation, which presented itself as capable of being made to serve, with most convenience, for the designation of the *logic of the will*. True it is, that between the will operated upon, and the will operating upon it, degrees of relation in respect of *power*, there are three: namely, superiority, equality, and inferiority; and that, in the case of *nomography*, the relation borne by the operating will to the will operated upon, is no other than that of superior to inferior: and, as in the case where the will operating is that of the *superior*, the mode of address has its appropriate denomination; namely, in private life, *command*, in political life, *law*, *ordinance*, and so forth,—so has it in the case where it is that of an *equal*; as for example, *proposal* or *proposition*: so likewise in the case where it is that of an *inferior*; as for example, *petition*, not to mention other appellations of a less decided character.

These things notwithstanding,—no sufficient cause presented itself to view, for considering the matter of this branch of art-and-science, as distributed under those denominations corresponding to the arithmetical distinctions, or for looking out for any other denomination than this of *nomography*. Why? *Answer*:—1. Because, in comparison of the occasions on which the expression of will receives the name of *law*, those on which it receives the two other denominations, are, when taken together, so much less important; the interest at stake being so much less considerable: 2. Because the *motives*, or say *inducements*, by which *compliance* (the effect aimed at) is produced, are not, in those cases, at bottom so different, as to a first glance they will be apt to appear to be: 3. Because, in respect of the rules, having for their object and effect the securing the coincidence between the mode of conduct which it is the desire of the operating *will* to produce on the part of him whose will is operated upon, and the conception thereby entertained of that same will, the difference in the several cases is comparatively inconsiderable. Supposing the assortment of rules for this purpose correct and complete as applied to *law*,—nothing, or next to nothing, will require to be done, in the view of providing rules for those two *other* cases.

Should the papers thus denominated arrive at a state in which they will have been deemed fit to see the light,—it will then be seen—in what a variety of ways the effects of *imperation* in its two shapes—positive command, or say jussion, on the one hand, and prohibition, or say inhibition, on the other—are producible. Consequence of this variety: difference—in some cases between the effect intended, and the effect produced; in other cases, between the effect *appearing* to be intended, and the effect in *reality* intended.—Cause of the difference: in the first case, want of discernment; in the other case, discernment applied to a sinister purpose.

Here, then, in the political melodrama, are so many *dramatis personæ*, who enter upon the stage in masquerade. Prohibition, disguised under the cloak of positive command: positive command or permission, under the cloak of prohibition: permission, remuneration and encouragement, under the cloak of punishment. Of this masquerade, under the head of *Indirect Legislation*, some intimation may be seen given, as long ago as the year 1802, in the *Traité de Législation Civile et Pénale*,—in what is said of the effect of *fixed penalties*, in the Introduction to Morals and Legislation, titles *Properties desirable in a lot of punishment*, and *Proportion between crimes and punishments*,—in what is said under the head of *Blind fixation*, &c. in the *Petition for Justice*, device the 8th; and in the work still in the press, intituled *Equity Dispatch Court Bill*, § 6, *Judge's Powers*.

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rious members, varying between £500,000 and £800,000. Motion being made for a committee of the Honourable House* to inquire by what means this portion of the national property "might be made most available for the public service," what was the course thereupon taken by the Honourable House? *Answer* — That which, without the imputation of rashness, a man might, by the wager of "ten thousand pounds to one penny," have pledged himself for its taking: It declined giving the honourable mover the trouble of any ulterior inquiry. "No inquiry," was the language: bring "*your charge;*" that is to say — call for the *punitive* remedy, and not either the *preventive*, or the *suppressive*. Hear and determine without evidence; we being determined that you shall have none.

To this case, as to all others, applies one of the fundamental, characteristic, and distinctive principles of Matchless Constitution; namely, the *Judica-teipsum* principle. To inquire into the conduct of the servants of the crown belongs not to any men but themselves.

* March 30, 1830. Motion for "a select committee to inquire into the land revenues of the crown, under the management of the Commissioners of Woods and Forests, and to report their opinion as to the means by which they may be rendered most available for the public service."

PAPER II.—INTRODUCTORY VIEW, &c.

THE following tract, as the title of it imports, has for its subjects the appropriate aptitude of public functionaries, and the expenditure employed at the charge of the people in engaging persons to subject themselves to the obligation of rendering the correspondent services. It is composed of four sections, detached from the ninth of the thirty chapters, or thereabouts, of a proposed constitutional code, the entire of which, wanting little of completion, will be published as soon as circumstances permit. A table, composed of the titles of the chapters and sections of it, is hereunto annexed.

The class, composed of the members of the official establishment taken in its several branches, was the only class in contemplation when the plan here delineated was taken in hand. In the progress of the work, the idea occurred that, supposing the plan well adapted to its purpose in the case of the class thus distinguished, it might be so, in no small degree, in the case of any other persons whose situation in life would, without any particular view to office, admit of the expenditure of the quantity of time and mental labour, which, with that view, is here proposed to be employed. But, what further may require to be said in relation to this secondary, and as it were collateral, subject, will be rendered more intelligible, by being postponed till after everything which belongs to the primary, and sole relevant, subject, has been brought to view.

Such being the *subjects*, now as to the *objects*, or say *ends in view*. These are, as the title of these pages intimates, maximization of the degree of appropriate aptitude in all its branches, on the part of the functionary in question — and minimization of the expense employed in the creation and purchase of that same aptitude.

In this same title, a proposition fully expressed is — that, in the plan to which it gives denomination, both these objects are endeavoured to be accomplished: a proposition not so fully, if at all expressed, but which will be seen maintained, is, that the accomplishment of the financial object, far from being, as seems but too generally supposed, at variance with that of the intellectual and moral, is, on the contrary, in no small degree, capable of being made conducive to it. A notion but too extensively entertained is — that, whatsoever quantity of public money is employed in engaging individuals to step into official situations, relative aptitude in proportionate degree will follow as a matter of course: and that, for example, if, in the case of a chief judge, for £5000 a-year salary, you get a certain quantity of appropriate aptitude, double the salary, and, without anything further, you double the aptitude. Such, at any rate, is the opinion which, in England, whether inwardly entertained or not, is outwardly and generally acted upon.

With this opinion, that which gives direc-

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tion to the here proposed arrangements, so far from harmonizing, approaches more nearly to the reverse: insomuch that, supposing a number of competitors, so far as instruction will go, endowed with equal degree of aptitude, — a man, who, if any such there be in the situation in question, is willing to take upon himself, without emolument in any shape, the performance of the duties of an office, is likely to perform them better than another man who would not undertake it for less than £5000 a-year: or even better than he himself would have done, if, on stipulating for that same sum, he had obtained it. In the course of the section entitled *Remuneratim*, being the first of the four sections of which this tract is composed, this opinion, together with the grounds on which it rests, may be seen developed.

First comes the *appropriate aptitude:* and the problem is, how to *maximize* it.

When, for the performance of a certain work, an *individual* finds himself in need of a helper, before he fixes upon any one, he naturally puts questions to any one that offers, — questions having for their object the obtaining satisfaction, as to the relative aptitude of the candidate: if, instead of *one* only, a number more than one presented themselves, he would, as far as time permitted, put those same questions to them all: and, in the putting of these questions, he would address himself to them separately, or all at the same time, as he found most convenient. In either way, by so doing, he would *examine* them; he, the *examiner;* they, the *examinees*. In private would the examination be of course performed in this case; for, on this occasion, of no person other than the individual himself, would the interest or convenience be in view: by publicity, if obtainable, he would, and in proportion to the number of persons present, be embarassed, and in no way benefited.

To the *functionary in chief*, who, for aiding him in the business of his department, feels the need of helpers in the businesses of the several sub-departments, their aptitude cannot in the nature of the case be a matter of indifference. His property will not, it is true, as in the case of the individual, be at stake upon the aptitude of his choice. His *property*, no: but his reputation, yes. If the subordinate chosen be to a certain degree unapt, the reputation of the superordinate will suffer in two distinguishable ways: by the badness of the work done under his orders, and by the weakness, or something worse, evidenced by the badness of the choice.

Under these circumstances, what can he do? For making, in his own person, any such examination as that which the individual, as above, has it in his choice to make, power is altogether wanting to him, for time is altogether wanting. To some person or persons other than himself, he must therefore have recourse for the formation of his opinion, and the determination of his choice. Who, then, shall they be? If, in each instance, the reporter, who in this case will be the recommender, be this or that individual, — what is *not* certain is, — that the giver of the advice will have had any better grounds for the choice than the asker: what *is* certain is, that he will not have had so great an interest in the goodness of the choice. For the goodness of *his* choice, the individual employed is not responsible to anybody but himself: the functionary is responsible to everybody. In so far as he is proof against the temptation to serve his own particular interests and affections at the public expense, his wish will, therefore, be, to see located, in each situation, the individual in whose instance the maximum of appropriate aptitude has place. Unable as he is of himself to perform the examination, the persons to whom it will be his desire to assign the task will in consequence be those, in whom the maximum of appropriate aptitude, with relation to this same task, is to be found. By this most general description, the next most general description is settled: they will be the persons that are most distinguished in the character of *instructors* in the several branches of art and science in which it is requisite the persons to be located should be proficients.

In regard to the *number* of the persons present, the examination must, in this case, be either private or public. Which shall it be? Private, it might or might not be as satisfactory as if public, to *himself;* to the public, it would not be. But, supposing him wise, it would not be so satisfactory, even to himself. For, the more complete the cognizance taken of the proceedings of these examiners by the public, the stronger the inducement they would have, each of them, for rendering his proceedings as well adapted to the purpose as it was in his power to render them. Thus, then, we have the maximum of publicity as a necessary condition to the maximum of appropriate aptitude: of appropriate aptitude — in the first place on the part of the examin*ers*, in the next place, on the part of the examin*ees*, in their quality of persons locable in the several situations, — say, in one word, *locables*. Evidenced by the answers will be the aptitude of the *examinees:* by the questions, that of the *examiners*.

Such, then, should be the *examination judicatory*. As to the *examinees*, by the opinion expressed by the votes of the members of this same judicatory, they will at any rate be placed in the list of persons more or less qualified for being located in the several official situations: as to their respective degrees of aptitude, in the judgment of the judicatory taken in the aggregate, they can be expressed by the several individual members.

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As to the manner in which the deduction may be made, it will be seen in § 16, of which *Locable who*, is the title.

Next subject, the *expense:* problem, how to *minimize* it. First expense, that of the instruction: next expense, that of remuneration for the services to be rendered by those by whom the instruction has been received.

For the instruction there must be the necessary apparatus of instruction: lands, buildings, furniture for every branch: appropriate implements according to the nature of each branch.

For administering the instruction there must, moreover, be instructors, and, for the instructors, subsistence, and remuneration in quantity sufficient to engage their services. As to the pockets from whence the expense is drawn, so far as regards subsistence — bare subsistence, together with the apparatus — they must, in the first place, be those of the public, for in this way alone can the sufficiency of it be secured. This being thus settled, such part of the remuneration as is over and above bare subsistence, — from what source shall it be drawn? Answer: from the pockets of those by whom alone the most immediate benefit from the instruction is reaped: those, to wit, by whom it is received. From *them* it cannot come, without being accompanied with willingness, and followed by retribution; and the quantity of it will of itself increase in exact proportion to the number of those benefited by it: in which case it will, in the same proportion, *be a bounty upon industry* on the part of the instructors. Drawn from persons other than those by whom the immediate benefit is reaped, it would neither be accompanied with willingness, nor followed by retribution: — and, if it were, as it naturally would be, a fixed sum — a sum not depending for its quantity on the exertions of the instructor to whom it is given — it would be a *bounty upon idleness.*

Next comes the expense of the remuneration to the intended functionaries; remuneration for the time and labour requisite to be expended on their part — before location, in qualifying themselves for rendering their several official services — after location, in the actual rendering of those same services.

For this purpose, the nature of the case presents three distinguishable modes: — 1. In compliance with appropriate calls, offer to take a less salary than that which has been proposed; 2. Offer to pay a price for it; 3. Offer to submit to its being reduced to a certain less amount, and then to pay such or such a price for it, after it has been so reduced. The two first modes are simple; the third, a compound of the two: all these will have to be considered.

A point all along assumed is — that, in each office, there is but one functionary: in a word, that no such implement as a *board* has place anywhere. Assumed, and why? Answer: for these reasons: All advantages that can have been looked for from a *board* are better secured by other means: in particular, by maximization of publicity and responsibility; and because the exclusion of this instrument of intrigue and delay is not less essential to aptitude than to economy. Moreover, these reasons may, as will be seen, be applied with still greater profit, to the judiciary, than to the executive, branch of government.

After all, neither by the intellectual competition, nor by the pecuniary competition, nor by both together, can the individuals, by whom the situation shall be filled, be finally determined. For the formation of this determination, there will still be need of some one person, or set of persons, in quality of *locator* or *locators*. By reasons, the essence of which is contained in the word *responsibility*, the choice has, in this case likewise, been determined in favour of number *one*.

This one person can be no other than the functionary in chief, under whose direction the functions belonging to all the several situations in question are to be exercised. As to his choice, it cannot but be influenced, not to say directed, by information which the examinations have put the public in possession of, as to the merit of the respective candidates; but it will not, because it cannot, be determined by any positive rule. By all that has been done, or can be done, towards divesting the power — the *patronage* (for that is the name of it) of the quality of *arbitrariness*, — it will not therefore be by any means divested of value, or sunk beneath the acceptance of a person competent to the task of exercising it.

In the annexed table of chapters and sections, [Paper XI.] will be seen a list of the several ministerial situations to be filled. *Prime minister* will be the natural appellation of him by whom those are thus filled, and by whom the exercise of the functions respectively belonging to them is directed. In § 17, intituled *Located Law*, will be seen how this consummation is proposed to be effected.

But, once more as to the *instructors*. After whatsoever may have been done for engaging them, remains still the question — *where* can they be obtained? Three sources of obtainment, and no more, does the nature of the case afford: they must be *found* at home, they must be *made* at home, or they must be *imported* from abroad. In each of these three modes, *invitation* is necessary. *Formation* is, in this case, an operation pre-eminently tedious: and the *formators*, where shall they be found? To find or make them would be to remove a smaller, by a greater difficulty. Different, according to the circumstances of

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the community in question, will, in this particular, manifestly be the eligible course.

Now as to the collateral subject, *national* education, and the assistance which the arrangements proposed for the instruction of official functionaries would give to it. What is manifest here is, that whatever is good, as applied to functionaries, will not be otherwise than good, as applied to non-functionaries: whatever promotes useful instruction in any shape in the one case, will promote it in that same shape, in no less degree, in the other. The only difference is — that, in the case of *national* education, that is to say, in the case of a youth educated at the charge of his parents, — for occupations other than the exercise of a public function, — there will be no service for the public to buy, no salary for the public to sell: and, the taking the benefit of the instruction provided will, on the part of each individual, be — not matter of necessity, as in the case of an official situation, but matter of choice. It was of course with a view to office alone, that the idea occurred, of bringing to view the several branches of instruction, that appeared requisite to give to public men the best qualification possible for the several classes of offices. But, as far as it goes, this same exhibition will be of use, with a view to no small variety of private occupations. When proposing for his child this or that occupation, the parent will find in this table, if not a sufficient body of information, a memento, at least, reminding him of the need of his satisfying himself as to what are the branches of instruction to which the mind of his child shall be directed, and of his looking out accordingly for an appropriate set of instructors.

As to instructors, — of whatsoever degree of aptitude will have been given to persons of this class, for the purpose of the instruction to be given by them to functionaries, the benefit will be open to non-functionaries: they who are able and willing to instruct the one, will not be less so to instruct the other.

So much as to *aptitude*. And as to *expense*, — of the expenditure necessary to the instruction of functionaries, a part, more or less considerable, will have been employed in the obtainment of means of instruction, which, without detriment to the one, may be employed in the instruction of the other. Of all such means the non-functionary class may have the benefit, without paying for it, any further than, in their quality of members of the whole community, they had necessarily been made to pay, along with all others, for the instruction of the functionary class.

To a plan of this sort, various objections will of course present themselves. These, as far as they could be anticipated, are here collected, and such answers as seemed sufficient, subjoined.

For conveying a general conception of them, the few words following may, in this page perhaps, suffice:—

I. Objection to the publicity of the examination — *Timid aptitude excluded.*

II. Objection to the probationary period proposed for the instruction — *Time, thence aptitude, insufficient.*

III. Objections to the pecuniary competition: —

1. Pecuniary responsibility diminished — thence corruption and depredation probabilized.

2. *Venality established.*

3. *Unopulent classes excluded. and thus injured.*

In the perusal of the here proposed arrangements, one thing should all along be borne in mind. The *sort* of government supposed by them is a representative democracy: the *time* in question that of the infancy, not to say the birth, of the state in that same form: such being the state of things, in which, in the largest proportion, the information endeavoured to be conveyed, could have any chance of being listened to.

But, in the several subordinate situations, even supposing the highest to be filled by a monarch, not inconsiderable is the number of those of the proposed arrangements, which, in the eyes even of the monarch himself, might be not altogether unsuitable. For, setting aside any such heroic endowment as that of sympathy for the people under his rule, — to a monarch, however absolute, neither can appropriate aptitude on the part of his official servants, nor frugality in respect of the pay allotted to them, be naturally unacceptable. The more completely security, in all its shapes, is given to the subject many, the greater is the quantity of wealth they will acquire; and, the greater the quantity they acquire, the greater is the quantity that can be extracted by him from them, for his own use: in particular, for the maintenance of his *standing army* — that high-pressure, high-priced, and most supremely-prized, engine, which is at once an instrument of supposed security for the timid, of depredation for the rapacious — of oppression for the proud — of boasting for the vain — and a toy for the frivolous and the idle: and, as to frugality, the less is expended in the comfort of any part of the subject many, the more is left for the fancies of the ruling one.

Setting aside the case of a pure aristocracy — a form of government nowhere exemplified to any considerable extent — one only form there is, in which maximization of official aptitude, and minimization of expense, are of course objects of congenial horror to the rulers. This is that, the composition of which is a mixture of monarchy and aristocracy, with a slight infusion of democracy in the

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shape of a sham-representative body, in the formation of which the subject many have a minute share. In this state of things, expense of official emolument is maximized: and why? That the possessors may be pampered by the receipt of it, the people intimidated by the force kept up by it, corrupted by the hope of it, and deluded by the glitter of it. Aptitude is, at the same time, minimized: and why? Because, if the contents of the cornucopia were distributed exclusively among the most apt, those junior partners of the all-ruling one, with their dependents and favourites, would have little or no share in it.

Four distinguishable sorts of matter may be seen pervading the whole texture of this extract: the *inactive*, the *expositive*, the *ratiocinative*, and the *instructional*. Of these, the enactive, the expositive, and ratiocinative, have already been exemplified in the three-volume work, entitled, "Traités de Legislation Civile et Penale," being the first of the four works published in French, from the author's papers, by M. Dumont.* Had the political state, to the circumstances of which the codes in question were to be adapted, been, as mathematicians say, a *given quantity*, — the *instructional* might not perhaps have been brought into existence: at any rate, it would not have occupied anything near the quantity of space which it will be seen to occupy here. But, the indeterminateness of these circumstances impossibilized, on many occasions, the giving to the matter the form of a positive enactment, capable of standing part of the text of the law, as in the case of a code emanating from authority. Necessitated was therefore the expedient of employing, instead of determinate expressions, general descriptions — for the purpose of conveying such idea as could be conveyed of the matter of the provision, which the nature of the case presented itself as demanding. By the *instructional* matter is accordingly meant the sort of matter, the purpose of which is the giving instructions to the legislator, if the tide of events should ever carry into that situation a man, or body of men, to whom it seemed good to give to such part of the matter as could not here be expressed *in terminis*, a character conformable in principle, to those parts, for which an expression thus completely determinate, has already been proposed.

Such being the distinctive characters of the parts in question, by some minds, it was thought, it might be found a commodious help to conception, if, as often as they presented themselves, applicable indication were given of them throughout, by prefixing to each portion of matter its appropriate denomination as above. To any person, to whom these additaments appear useless, they need not offer any annoyance, — for he has but to pass them by, and read on, as if no such words were there.

Of a code, to which the stamp of authority had been affixed, these distinctions would afford a commodious method of exhibiting so many authoritative abridgments: abridgments of the only sort, on which any safe reliance can be placed. By the enactive part, if published alone, the most condensed of all the abridgments would be presented: by appropriate types and figures of reference, intimation of the existence of the omitted matter might be conveyed, without any sensible addition to the bulk of it. In another edition, might be added the expositive matter; in a third, the expositive and the ratiocinative in conjunction.

In England, a highly laudable disposition has of late shown itself, and from a quarter from which it might be followed by effect: — a disposition to raise the language of the legislator to a level, in respect of propriety, somewhat nearer than that which it occupies at present, in comparison with the worst governed among other civilized nations, whichsoever that may be. A design so extensively useful, would indeed stand but an indifferent chance of being carried into effect, if the fraternity of lawyers, professional as well as official, could not find adequate inducement for giving it their permit. But neither is such toleration altogether hopeless. What that particular interest requires is — that the rule of action shall continue in such a state, that, without their assistance, comprehension of it, to a degree sufficient for the regulation of conduct, should, to all other members of the community, continue impossible. But, such is the excess to which the bulkiness and disorderliness of it have been carried; — such, in consequence, even to themselves, the difficulty of stowing it and keeping it stowed in the mind, in a state capable of being applied to use as wanted; — that, for their own relief under that difficulty, the risk of rendering the oracle too extensively and effectually comprehensible, may perhaps appear not too great to be hazarded.

This being supposed, — a result, that seems not altogether out of the sphere of possibility, is — that even those to whom the *matter of* all such codes as those here exemplified is — it need not be mentioned by what causes — rendered the object of insurmountable abhorrence, — the *form*, as far as regards *arrangement* and *expression*, may, in a degree more or less considerable, be regarded as a subject for adoption. To any person by whom it may have happened to be viewed in this light, the intimation conveyed by the words *enactive*, *expositive*, and *ratiocinative*, may perhaps appear not altogether devoid of use. In the case

* See the several works which were included under that title, as printed in the present collection.

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of the series of codes to which the present extract belongs,—in proportion as the *matter* presented itself, the *form* in which it might be presented, it was thought, to most advantage, came along with it. Thus it was, that, as they were committed to paper, explanations, belonging to the head of *form*, became so many materials for a short disquisition, which may perhaps be submitted to the public in a separate state. But, even from the small specimen here exhibited, it may be perhaps in some sort conceived, how great would be the contribution to condensation, as well as precision, if the expedient were employed, of substituting to the continued repetition of a portentous pile of particulars, that of a single general expression, in which they were all contained: the import of that expression having, once for all, been fixed—fixed, by an appropriate exposition, in the ordinary mode of a definition *per genus et differentium*—or, where that is inapplicable, in such other mode as the nature of the case admitted of.

Between the several sorts of matter, distinguished from each other as above, — the actual separation, it cannot but be observed, has not, with any approach to uniformity, been, on this occasion, made. In one and the same article, two, or even more, of these species, will not unfrequently be found exemplified. In an authoritative code, this want of symmetry might, supposing it worth while, be remedied. In the present unauthoritative work the difficulty of separating the proposed *enactive* and the *instructional* from each other, was found so great, that the necessary labour and time (which would have been neither more nor less than that of writing the whole anew) was felt to be too great to be paid for by any possible use. In like manner, in other instances, the *ratiocinative* will be seen blended with the *enactive*. In an authoritative code, the labour might perhaps, in this case, though this does not appear altogether clear, be paid for by the use: for example, for the purpose of an authoritative *abridgment*, such as the one above proposed. But, in the present unauthoritative sketch, a mixture of the *ratiocinative* presented itself as desirable, not to say necessary, were it only to the purpose of humectating the dryness of the enactive matter, and diminishing the aversion, which a set of arrangements, so repugnant to commonly-prevailing notions and affections, would have to encounter, if inducements to acquiescence were not in some shape or other mixed up with it.

In a *civil*, or say, a *right-conferring*, code (for *civil* expresses so many different things that it expresses nothing,) and in a *penal*, or say a *wrong-repressing* code, especially if made for a *given* political state, the separation would be a work less difficult than it has been found in the present one: accordingly, in the *Traités de Legislation*, it may, in both instances, be seen effected.

In that part of the present proposed code, which regards the *judiciary establishment*, the heads of which may be seen in the annexed table, [Paper XI.] the separation will be found much less imperfect.

Another particular, which will naturally call forth observation, is the practice of adding to the numerical denomination of a section, when referred to, the *title* by which it is characterized. In authoritative codes, an additament of this sort is not, however, without example. In the present unauthoritative sketch it has been matter of necessity. By the author, nothing he writes, in the character of a proposed code or law, can ever be regarded as perfected, so long as he lives: in the proposed code in question, alteration after alteration have, in great numbers, at different times, been actually made: further alteration after further alteration will continually be contemplated: and wherever, in regard to an entire *article*, either insertion or elimination have place, all the articles which follow it in the same section will require a fresh numerical denomination, and the anterior reference, if preserved, will be found delusive: and so in the case of *sections* or *chapters*.

Into what is new in point of form, a further insight will, it is hoped, ere long be given, by another and larger preliminary extract from the present Constitutional Code; to wit, the *judiciary* part above alluded to. The *enactive* matter, combined with what seemed the indispensable portion of the other sorts of matter, is already in a state fit for the press, as likewise a considerable portion of the *ratiocinative* and *instructional*, in a detached state. From the annexed table of the titles of chapters and sections for the whole, an anticipation more or less extensive may be formed of the instruments which have been contrived for the purpose of *compression*, and may be regarded as a sort of *condensing engines:* a principal one may be seen composed of the general word *function*, followed by the several specific adjuncts attached to it. In several of its parts, the matter of this same *judiciary* code could not be determined upon, without correspondent determinateness being given to correspondent portions of the *procedure* code: a code for this purpose is in such a state of forwardness, that all the principal and characteristic points are settled, and nothing remains to be done, but the reducing to appropriate form some portion of the matter which has been devised.

In this work will be included, as far as circumstances admit, an all-comprehensive *formulary*, exhibiting forms for the several written instruments of procedure: in parti-

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ular the instruments of *demand* and *defence*, for suits of all sorts; as also forms for the *mandates* required to be issued by the judge, on the several occasions, for the several purposes: and for each mandate an appropriate *denomination* has of necessity been devised. On this occasion, as on every other, the endeavour has all along been to render the instrument of designation as characteristic as possible of the object designated. *Summonition mandate* will accordingly be seen taking place of *subpœna; prehension and adduction* mandate, of *capias* and *habeas corpus:* and, in lieu of *adduction*, — as the purpose requires, will be subjoined *abduction, transduction, sistition, sequestration, vendition*, and so forth; an appellation, such as *prehension*, and *vendition mandate*, for example, may, it is hoped, be found by lay-gents to constitute no disadvantageous substitute to *fieri facias* or *fi fa:* — to *lay-gents*, that is to say, to all human beings, but those whose interest it is that everything by which human conduct is undertaken to be regulated, should be kept to everlasting in as incomprehensible a state as possible.

Demand paper will, in like manner, for all occasions taken together, be seen substituted, to the aggregate, composed of *action, mandamus, bill, indictment, information, libel*, and so forth: *defence paper*, to *plea, answer, demurrer*, and so forth: for, if artificial injustice has its language, so has natural justice. But time and space join in calling upon conclusion to take place of digression.

With the regret that may be imagined, does the reflection occur — that, as far as regards the diction, there are but too many political states, in which the above-mentioned views, supposing them approved of, could not be carried into any such full effect, as in those in which the language in use is the English: for, with the exception of German, there exists not, it is believed, anywhere, that language, which will lend itself, anything near so effectually as the English, to the formation of such new appellatives as will be necessary to precision and condensation: in particular, [ineffectual is] the French, which, notwithstanding its scantiness, unenrichableness, and intractability, still seems destined to continue — say who can, how much longer — the common language of the civilized world.

For a particular purpose, the present extract has been sent to press, before the proposed code to which it belongs, and in which it is designed to be inserted, could be completed. Hence it is that, but for this information, — the numerical figures, in the titles to the several sections, might be taken for so many *errata*, or have the effect of giving to the whole publication the appearance of a fractional part of a work that has been lost.

This same circumstance will serve to account for the *headings* of the pages.

It may not here be amiss to observe, that of the bulk of the work in its complete state, no judgment can be formed, from the space occupied by the three first of these four sections. The *enactive* part of the first four chapters together, for example, does not occupy so large a space as does the least of these same three sections.

Amid so much innovation, a short caution may be not altogether unseasonable. In the frugality here recommended, no *retroaction* is comprised. By the taking away of anything valuable, either in possession, or even though it be but in expectancy, so it be in fixed expectancy, whether on the score of remuneration, how excessive soever, or on any other score, — pain of *frustrated expectation* — pain of disappointment, is produced. In the import of the above words, *fixed expectancy*, is contained whatever is rational and consistent with the *greatest-happiness principle*, in the pertinacity, manifested by the use of the English parliamentary phrase, *vested rights:* and note — that by forbearing to apply the alleviation which, by the defalcation in question might be given, in respect of the public burthens, to persons of all classes taken together, no such pain of disappointment is produced.

As little ought it to pass unheeded, that, supposing a high-paid functionary divested of a certain portion of wealth thus misapplied, he is not, by a great many, the only sufferer: with him will be sufferers all persons of all classes, in proportion as their respective means of expenditure were derived from his. Supposing, indeed, the over-pay derived from *crime* — obtained, for example, by false pretences, — by this supposition the case is altered. — But, add the supposition, that all by whom the punishment should be ordained, or that all by whom a part should be taken in the infliction of it, are sharers in the guilt, then comes the question — by whom shall be cast the first stone? An Englishman need not look far to see this supposition realized. Prudence might in this case join with sympathy, in the constructing a bridge of gold, for carrying to the land of safety all opponents. Only at the expense of those, who would otherwise have been, but never will have expected to be, receivers — can *retrenchment*, on any other ground than that of *punishment*, be, except in case of public insolvency, without hesitation, justified.

On the occasion of the ensuing proposed arrangements, mention of divers periods of years has of necessity been made. It might have been some help to conception, if, on the occasion of this or that train of suppositions, a determinate day could have been fixed, for the commencement of each period. This, however, could not be done. For different countries, different days would have been requisite. For this country — England, to wit

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— the day may be fixed by imagination with something like precision. The day for the commencement of this code with the stamp of authority on the first page of it, is the day which will give commencement to the hundred and first year, reckoning from the day on which the author will have breathed his last. In the meantime, to those who have the faculty of extracting amusement from dry matter, it may serve as a second Utopia, adapted to the circumstances of the age. Of the original romance, it may, however, be seen to be — not so much a continuation as the converse. In the Utopia of the sixteenth century, effects present themselves without any appropriate causes; in this of the nineteenth century, appropriate causes are presented waiting for their effects.

PAPER III. — EXTRACT FROM THE PROPOSED CONSTITUTIONAL CODE;

ENTITLED,

OFFICIAL APTITUDE MAXIMIZED — EXPENSE MINIMIZED.

BY JEREMY BENTHAM, ESQ. BENCHER OF LINCOLN'S INN.

LONDON, 1816.

PAPER IV. — SUPPLEMENT TO THE ABOVE EXTRACT.

*** *As the Extracts from the Constitutional Code, being Chapter IX.* § 15, 16, *and* 17, *with the accompanying Supplement, will be found in their proper place, it is not thought desirable to reprint them here.*

PAPER V. — DEFENCE OF ECONOMY

AGAINST

THE RIGHT HONOURABLE EDMUND BURKE.

FIRST PRINTED IN 1817.

ADVERTISEMENT.

THE paper here presented to the reader under the title of *Defence of Economy against the Right Honourable Edmund Burke*, together with another containing a *defence* of the same more useful than welcome virtue *against the Right Honourable George Rose*, were written as long ago as in the year 1810. At that time the joint destination of the two papers was — to form a sequel to a tract of no great bulk, having for its title *Hints respecting Economy*. For its subject, it had taken the whole of the offical establishment, and for

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its objects, two intimately connected practical operations, viz. *minimizing official pay*, and *maximizing official aptitude*: operations the mutual subservience of which, in opposition to the universally convenient, universally received and acted upon, and in truth but too natural opinion, of their incompatibility, was maintained. The circumstance, by which the publication of it, and in some degree the completion of it, was suspended, was the expectation of obtaining certain documents, which in the way of exemplification and illustration afforded a promise of being of use. Meantime, the turn of affairs produced some incident or other, by which the author's attention was called off at the moment to some other quarter; and thus it is, that altogether the three papers have been till now lying upon the shelf.

As to the two objects in question, so it was, that the plan, which had presented itself to the author as that by which both of these objects might be secured, and the only one by which either of them could be so in any degree approaching to perfection, having the misfortune to find itself reprobated with one voice by the two distinguished statesmen above mentioned, the removal of the impediment opposed by so strong a body of authority, presented itself of course as an object of endeavour altogether indispensable.

In the order at that time intended, a statement of the principles which had presented themselves as claiming the direction of practice would have preceded the examination here given of the principles which it was found necessary to combat:—hence the reference which may here and there be found to portions of matter, which neither in any other place in which they could be referred to have made, nor in this place can make, their appearance. By a change in the order thus originally intended, that one of the two defences which will here be found (for in the present receptacle there was not room for the other)* cannot, it will therefore be evident enough, but appear under more or less of disadvantage. But, to the rendering them perfectly intelligible as far as they go, it did not seem that, to either of them, any of the matter which belonged to that by which they had been designed to be preceded, was necessary: and, by the forms of warfare, especially considering the situation and character of the person against whom it was unavoidably directed, the attention of many a reader (it has been supposed) may be engaged, whose perseverance would not carry him through the dry matter of a sort of didactic treatise, the principles of which are in a state of irreconcilable hostility to the personal interest of that class of persons which forms the subject of it—to which it cannot but look for the greatest number of its readers—and without whose concurrence, how far soever from being accompanied with any degree of complacency, it could not at any time be in any degree carried into effect.

At the time when these papers were penned, not any the slightest symptom of official regard for public economy was it the author's good fortune to be able anywhere to recognise: everywhere it seemed an object of contempt—of contempt not only to those who were profiting by, but to those who were and are the sufferers from, the want of it. Under this impression, the wonder will rather be, how the author's perseverance could have carried him so far into the subject as it did, than how it should happen that, by the sense of a slight deficiency, the suspension should have been commenced, and, by a series of intervening avocations, have been continued. At present, in this respect, for a time at least, matters seem to have undergone some change. Surely enough, if it does not at the present, small indeed must be its chance of obtaining any portion of public attention at any future point of time. But should it happen to the two, or either of them, to obtain any portion of favourable regard, the more favourable, the greater will be the encouragement afforded for the labour necessary to the bringing the plan to that degree of maturity which would be necessary to its producing any assignable effect in practice.

Short as it is, in the intimation above given of the nature of the plan, one circumstance will already be but too undeniably visible; viz. that not only without any exception in respect of the first of its two connected objects, viz. *minimizing official pay*, but likewise, and with very little exception in respect of the other, viz. *maximizing official aptitude*, nothing can be more irreconcilably opposite to the particular interest of that class of persons, without whose concurrence no effect whatever could be given to it. Yes; even in respect of this latter object: for if, in the instance of every office, so odd an effect as that of an exclusion put upon all who were not the very fittest for office, or even upon all who were not flagrantly unfit for it, were to be the result, an exclusion would thus be put upon all those, for whom—and their connexions, and the connexions of those connexions, and so on—for whom gentlemen are most anxious, because in every other way they find it most difficult, to provide. But if, on the part of the plan in question, the objection is grounded on the opposition of interests, and consequent unwillingness were to be regarded as a proof of impracticability, it would be a proof, not only that in government nothing good *will* ever be done, but moreover, that in government in general, and in our own in particular, of all the good that *has* ever been done, the greater part has *not* ever been done. Among the points on which

* This tract was first printed in the *Pamphleteer* (No. XIX.)

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government turns, some there are relative to which the interest of the ruling few, be they who they may, coincides with the universal interest; and as to all these points, in so far as it happens to them to know what that same universal interest is — as to all these points, gentlemen's regard for that same universal interest may be reckoned upon without much danger of error, or much imputation on the score of credulity. Unfortunately, under most governments, and under this of ours in particular, other points there are, in which that partial and sinister interest is in a state of implacable hostility with the universal interest: and of this unfortunate number are the two just mentioned: and so far as this hostility has place, so far is the universal interest, as being the least condensed, sure of being overpowered by, and made a constant sacrifice to, that which is most so.

In this state of interests, the subject-many may deem themselves particularly happy, when, to make up a provision worthy of the acceptance of a member of the ruling few, nothing more than the precise amount of that same sum, with the addition of the expense of collection, is taken out of the pockets of the subject-many. An unfortunately more common case is — where, for each penny put into the privileged pocket, pounds to an indefinite number must be, and are accordingly, taken out of all pockets taken together: from privileged ones in this way, with more than adequate compensation — unprivileged, without anything at all. Thus it is, that, while *wars* are made to make *places*, places are made to secure commencement or continuance to wars: and, lest this should not be enough, distant dependencies — every one of them without exception productive of net loss — are kept up and increased. Yes; productive of *net loss:* for this is as uncontrovertibly and universally the case, as that two and two make four; for which reason, no man who has a connexion to provide for, or to whom power and glory, might, majesty, and dominion, in the abstract, are objects of concupiscence, can endure to hear of it.

As to war, so long as in the hands of those who have speech and vote in parliament, or of their near connexions, offices are kept on foot, with emolument in such sort attached to them, as to be materially greater in war than in peace, who is there that will venture to affirm that, of a parliament by which an arrangement of this sort is suffered to continue, the conduct is in this respect less pernicious in effect, or, when once the matter has been brought to view, less corrupt in design, than it would be if in that same number the members of that same body were, by masses of money to the same value, received under the name of *bribes*, engaged by one another, or by any foreign power, clandestinely or openly, thus out of an ocean of human misery to extract so many of these drops of comfort for themselves? In both cases, the same sums being pocketed — pocketed with the same certainty, and under the same conditions — in what particular, except in the language employed in speaking of them, and in that chance of punishment and shame which would have place in the one case, and has not in the other, do these two cases present any the smallest difference? Tell us, good Sir William! — tell us, good your lordship, lord of the freehold sinecure! — exists there any better reason, why emoluments thus extracted should be retained, than why bribes given and received to the same amount, and by the same means, without disguise, should, if received, repose in the same right honourable pockets?

In a certain sensation called *uneasiness*, Locke beheld, as his Essays tell us, the cause of everything that is done. Though on this occasion, with all his perspicuity, the philosopher saw but half his subject (for happily neither is pleasure altogether without her influence,) sure it is, that it is in the rougher spring of action that any ulterior operation, by which the constitution will be cleared of any of its morbific matter, will find its immediate cause.

Yes: — in the returning back upon the authors some small portion of the uneasiness which the sufferers have so long been in the experience of — in this necessary operation, for which the constitution, with all its corruptions, still affords ample means — in this, if in anything, lies the people's hope.

The instrument by which the god *Silenus* was made into a poet and a prophet — it is by this, if by anything, that noble lords and honourable gentlemen will be fashioned into philosophers and patriots: it is by this, if by anything, that such of them whose teeth are in our bowels, will be prevailed upon to quit their hold.

Submission and obedience on the one part are the materials of which power on the other part is composed: whenever, and in so far as, the humble materials drop off, the proud product drops off along with them. Of the truth of this definition, a practical proof was experienced in 1688 by King James, in the case of England and Scotland: in 1782 it was experienced by King George and his British parliament, in the case of Ireland. In the character of ancient Pistol eating the leek, in that same year was the first Lord Camden seen and heard in the House of Lords by the author of these pages, demonstrating, by the light of an instantaneous inspiration, to ears sufficiently prepared by uneasiness for conviction, the never till then imagined reasonableness of the termination of that system, under which that island was groaning, under the paramount government of a set of men, in the choice of whom it had no share; in the same character, in the

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event of a similar expediency, might his most noble son be seen in one house, and his right honourable grand nephew in the other, holding in hand—the one of them a bill for the abolition of sinecures, useless places, needless places, and the overpay of useful and needful places; the other a bill for such a reform in the Commons House of Parliament, as may no longer leave the people of Great Britain, in a number more than twice as great as the whole people of Ireland, in a condition, from which the people of Ireland were liberated, as above, at the instance of the learned founder of an illustrious family, which was, in one instance at least, not ill taught: in a word, such a reform as, by divesting the ruling few of their adverse interest, by which, so long as they continue to grasp it, they are rendered the irreconcilable enemies of those over whom they rule, will leave to them no other interests than such as belong to them in common with the people, who are now groaning under their yoke.

What belongs to the only effectual remedy which the nature of the case admits of, viz. a *restoring* change (for such in no small degree it would be) in the constitution of the House of Commons — may perhaps be spoken to elsewhere: it belongs not directly to this place. What does belong to it is the nature of the principles established on the subject of public expenditure: principles not only acted upon, but avowed: not only avowed, but, from the connected elevations — the alas! but too closely connected elevations — the mount of the houses and the mount of financial office, preached. In these principles, it was long ago the fortune of the author to behold causes of themselves abundantly adequate to the production of whatever sufferings either are felt or can be apprehended: and if it be without any very great demand for our gratitude, yet will it be seen to be not the less true, that to two distinguished statesmen, one of whom is still in a condition to answer for himself, we are indebted for the advantage of beholding these same principles in a tangible shape — in that tangible shape in which they have been endeavoured to be presented to view, in two separate yet not unconnected tracts; viz. in the present *Defence of Economy*, and in the other with which it is proposed to be succeeded.

November 1816.

TITLES OF THE SECTIONS.

I. *Defence of Economy against Burke.*

SECT. I. Burke's Objects in his Bill and Speech.

II. Method here pursued.

III. Propositions deduced from Burke's Economy Speech.

1. Concerning Public Money — what the proper Uses of it — Propositions 1, 2, 3. ☞ *See Defence against Rose*, § 2, 3, 4, 5, 6, 8, 9.

IV. Concerning Title to Reward — Proposition 4.

V. Concerning virtuous Ambition, Gratitude and Piety — Propositions 5, 6, 7, 8.

VI. Concerning Party Men and their Principles — Propositions 9, 10.

VII. Concerning Ministers and their Duty to themselves — Propositions 11, 12, 13, 14.

VIII. Concerning Gratuitous Service and the Profligacy involved in it — Propositions 15, 16.

IX. A Prophecy, and by Burke — The King will swallow up the whole Substance of the People — Proposition 17. ☞ *See Rose for the manner how.*

X. Gratuitous Service, Burke's Objections to it examined. — Necker. — Burke's East-India Bill.

XI. Burke's Objections to the Application of the Principle of Competition to this Purpose — its Frivolousness.

XII. Concluding Observations. — Burke, why thus examined.

II. *Defence of Economy against Rose.*

SECT. I. Introduction.

II. Mr. Rose's Pleas in Bar to Economy. — Plea 1. Vastness of the Expenditure.

III. Plea 2. Need of Provision for Decayed Nobility, &c.

IV. Plea 3. Need of Subsistence for Official Persons.

V. Plea 4. Need of Money for making Fortunes for Official Persons and their Families.

VI. Plea 5. Need of Money for buying Men off from Professions.

VII. Digression concerning the Value of Money.

VIII. Plea 6. Need of Money as a Stimulus to Official Exertion.

IX. Plea 7. Need of Money for the Support of Official Dignity.

X. Plea 8. Concerning the late Mr. Pitt's Expenditure: — the Impropriety of Economy how far proved by it.

XI. Concerning Influence.

XII. Concerning Pecuniary Competition — and the Use made of the Principle.

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DEFENCE OF ECONOMY AGAINST BURKE.

SECTION I.

BURKE'S OBJECTS IN HIS BILL AND SPEECH.

I BEGIN with Mr. Burke: and this, not only because, as compared with that of any living statesman, the authority of a departed one unites the advantages that are afforded to authority of the intellectual kind by *anteriority* and by *death;* but because it seems but natural that, in the delivery of his own opinions, the junior and survivor should have drawn upon his illustrious predecessor, for such assistance, if any, as, in the way of argument, he may have regarded himself as standing in need of.

Such, as they will be seen to be, being the notions advanced by the orator — such their extravagance—such their repugnance even to the very measure they are employed to support,—what could have been his inducements, what could have been his designs? Questions these, in which, if I do not much deceive myself, the reader will be apt to find at every turn a source of perplexity in proportion as the positions of the orator present themselves to view, stripped of those brilliant colours, by the splendour of which the wildest extravagances and the most glaring inconsistencies are but too apt to be saved from being seen in their true light.

In the hope of affording to such perplexity what relief it may be susceptible of, I shall begin with stating the solution which the enigma has suggested to my own mind:—showing what, in my view of the ground, was the plan of the orator's campaign—what the considerations by which he was led thus to expose his flanks, laying his principles all the time so widely open to the combined imputations of improbity and extravagance. Here then follows the statement by way of *opening*. On the mind of the intelligent and candid reader, it will make no ultimate impression any farther than, as to his feelings, the charge stands in each instance sufficiently supported by the evidence.

Needy as well as ambitious—dependent by all his hopes on a party who beheld in his person the principal part of their intellectual strength — struggling, and with prospects every day increasing, against a ministry whose popularity he saw already in a deep decline, the orator, from this economical scheme of his, *bill* and *speech* together, proposed to himself, on this occasion, two intimately connected, though antagonizing objects; viz. immediate depression of the force in the hands of the adversary, and at the same time the eventual preservation and increase of the same force in the hands of the assailants, in the event of success, which on the like occasions are, by all such besiegers, proposed to themselves, and, according to circumstances, with different degrees of skill and success pursued.

For the more immediate of the two objects, viz. *distress of the enemy*, it was, that the bill itself was provided; and to this object nothing could be more dexterously or happily adapted. Opposition it was certain of: and whatsoever were the event, advantage in some degree was sure. Suppose the opposition completely successful, and the whole plan of retrenchment thrown out together: here would be so much reputation gained to the promoters of the measure, so much reputation lost to the opponents of it. Suppose the plan in any part of it carried, in proportion to the importance of the part so carried, the reputation of its supporters would receive an ulterior increase: while that of its opponents, the weakness betrayed by them increasing in proportion to the conquests thus made upon them, would, in the same proportion, experience an ulterior decrease.

But as it is with the war of hands, so it is with the war of words. No sooner is the conquest effected, than the weakness of the vanquished becomes in no inconsiderable degree the weakness of the conquerors—of the conquerors, who from assailants are become possessors. To this eventual weakness an eventual support was to be provided.

To this service was his *speech* directed and adapted: we shall see with what boldness, and—in so far as the simultaneous pursuit of two objects, in themselves so incompatible, admitted — with what art.

Such in truth were the two objects thus undertaken to be recommended—recommended at one and the same time—to public favour: a practical measure (a measure brought forward by his bill)—a measure of practice, and in the same breath a set of *principles* with which, necessary as they were to the main and ulterior purpose, the measure, so far as it went, was in a state of direct repugnancy.

The problem, therefore, with which his ingenuity had to grapple, was—so to order matters, as that the economical measure should be pursued, and even if possible carried, with as little prejudice as possible to the necessary anti-economical principles.

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Of principles such as these which have been submitted to the reader*—of principles really favourable to frugality and public probity—of principles in which waste and corruption would equally have found their condemnation, in whatever hands—in the hands of whatever party—the matter of waste and means of corruption were lodged,—of any such principles the prevalence would, by its whole amount, have been in a proportionable degree unfavourable to the orator's bright and opening prospects. Once in possession of the power he was aiming at, the only principles suitable to his interests, and thence to his views, would be such principles as were most favourable to the conjunct purposes of waste and corruption. So far as was practicable, his aim would therefore be, and was—to preserve for use the principles of waste and corruption in the event of his finding himself in possession of the matter and the means—to preserve them in undiminished, and, if possible, even in augmented, force.

For this purpose, the only form of argument which the nature of the case left open to him was, that of *concession* or admission. Such, accordingly, as will be seen, was the form embraced by him and employed.

By the portion, comparatively minute as it was, of the mass of the matter of waste and corruption, of which his bill offered up the sacrifice, his *frugality* and *probity* were to stand displayed: by the vast, and as far as depended upon his exertions, the infinite mass preserved—preserved by the principles let drop, and as it were unwillingly, and as if wrung from him by conviction in his *speech*, his *candour*, his *moderation*, his *penetration*, his *discernment*, his *wisdom*,—all these virtues were, in full galaxy, to be made manifest to an admiring world.

All this while, an argument there was, by which, had there been any lips to urge it, this fine-spun web, with purity at top and corruption at bottom, might have been cut to pieces. If of the precious oil of corruption a widow's cruise full, and that continually drawn upon, be so necessary as you have been persuading us to believe, why, by any such amount as proposed, or by any amount, seek to reduce it?

True: *had there been any lips to urge it.* But, that there were no such lips, was a fact of which he had sufficient reason to be assured: to urge it, probably enough, not so much as a single pair of lips:—to listen to it, most assuredly, not any sufficient number of ears: and where ears to listen and eyes to read are wanting, all the lips in the world to speak with, all the hands in the world to write, would, as was no secret to him, be of no use.

Thus, then, by the craft of the rhetorician, were a set of principles completely suited to his purpose—principles by a zealous application of which, anything in the way in question, howsoever pernicious, might be done—anything, however flagrantly pernicious defended—collected together as in a magazine ready for use: a magazine, too, the key of which was in his own pocket, and with an adequate assurance, that, on the part of no enemy whom he and his need care for, would any attempt ever be made to blow it up.

Suppose now the orator seated at the treasury board—the Marquis of Rockingham on the seat of the first lord, looking great and wise—the orator himself thinking and writing, and speaking and acting, in the character of secretary. Let him fill his own pockets, and those of his favourites and dependents, ever so rapidly, ever so profusely, no man can ever say to him, *You have belied your principles:* for, as will be seen, so long as there remained in the country so much as a penny that could be taken in a quiet way, his principles were such as would bear him out in taking it.

All this while, honourable gentlemen on the other side might have grumbled, and would of course have grumbled. *Undeserved! undeserved!* would have been the exclamation produced by every penny wasted. But *Well-deserved! well-deserved!* would be the counter-cry all the while: and, the *ayes* being in possession, the ayes would have it. *Unprincipled! unprincipled!* would be an interjection, from the utterance of which honourable gentlemen would, by their principles—their real principles—their operating principles—not their principles for show—but their principles for use—be on both sides alike (as lawyers say) *estopped.*

As to the principles thus relied upon by the orator, they will be seen to be all of them reducible to this one, viz. that as much of their property as, by force or fraud, or the usual mixture of both, the people can be brought to part with, shall come and continue to be at the disposal of him and his;—and that, for this purpose, the whole of it shall be and remain a perpetual fund of premiums, for him who on each occasion shall prove himself most expert at the use of those phrases by which the imaginations of men are fascinated, their passions inflamed, and their judgments bewildered and seduced; whereupon he—this orator—whose expertness in those arts being really superior to that of any man of his time (to which perhaps might be added, of any *other* time) could not but by

* Of the matter of these principles, a portion more or less considerable would probably be found in that part which concerns *Reward*, of the work not long ago (1811) published in French by Mr. Dumont, under the title of *Theorie des Peines et des Récompenses*, from some of the author's unfinished manuscripts. (See the Rationale of Reward, in this collection.)

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himself be felt to be so, would in this perpetual *wrestling-match* or *lottery* — call it which you will — possess a fairer chance than could be possessed by any other adventurer, for bearing off some of the capital prizes.

SECTION II.

METHOD HERE PURSUED.

THUS much as to the purpose pursued by the orator in this part of his speech. A few words as to the course and method pursued in the view here given of it.

The passages to which the development of the principles in question stand consigned, are contained, most if not all of them, in that part of the speech which, in the edition that lies before me, occupies, out of the whole 95 pages, from 62 to part of 68 inclusive. This edition is the third — year in the title-page, 1780; being the year in which the bill was brought in; and, as between edition and edition, I know not of any difference.

My object is to present them to the reader in their genuine shape and colour, stripped of the tinsel and embroidery with which they are covered and disguised.

For this purpose, the course that happened to present itself to me was — dividing the text into its successive component and distinguishable parts, — to prefix to each such part a proposition of my own framing, designed to exhibit what to me seemed the true and naked interpretation of it. Next to this interpretation—that the best and only adequate means for forming a correct judgment on the correctness of it, may not in any instance be for a moment wanting to my reader—comes the correspondent passage of the text; viz. that passage in which, as appeared to me, the substance of the interpretation will be found to be more or less explicitly or implicitly contained.

Lastly follow in general a few observations, such as seemed in some way or other conducive to the purpose of illustration, and in particular as contributing, and in some instances by means of extraneous facts, to justify the preceding interpretation, and clear it of any suspicion of incorrectness to which at first view it might seem exposed.

In some instances, the truth of the interpretation will, I flatter myself, appear as soon as that portion of the text which immediately follows it has been read through; in other instances, two or three such extracts may require to have been read through, before the truth of the interpretation put upon the first of them has been fully proved: in others, again, this or that extraneous fact may to this same purpose seem requisite to be brought to view, as it has been accordingly, together with a few words of explanation or observation, without which the relevancy of the facts in question might not have been altogether manifest.

As to the *order* in which the propositions here succeed one another, should it present itself to the reader as differing in any respect from that by which a clearer view of the subject might have been exhibited, he will be pleased to recollect, that the order thus given to the effusions of the rhetorician, is the order given to them by himself; and that, by their being exhibited in this order of his own choosing, the thread of his argument is delivered unbroken, and the parts of it untransposed.

Having thus before him two sets of principles,—one of them, in the preceding part, suggested by a perfectly obscure—the other, in this present part, laid down by a transcendently illustrious hand,—the reader will take his choice.

SECTION III.

PROPOSITIONS DEDUCED FROM BURKE'S ECONOMY SPEECH.*

1. *Concerning Public Money—what the proper Uses of it.* *Propositions* 1, 2, 3.

Proposition 1. On condition of employing, upon occasion, in conversation or elsewhere, the word *reward*, in phrases of a complexion such as the following; viz. "furnishing a permanent reward to public service,"† public money ought, at the pleasure of kings and ministers, to be habitually applied to the purpose of making the fortunes of individuals; and that in such manner as to raise their families to a state of grandeur and opulence.

Proposition 2. To this power of parcelling out the property of the public among the nominees of kings and ministers, there ought to be no limit: none to the quantity capable of being thus put into the hands of each nominee; none to the whole quantity of public property thus disposed of.

Proof. "Whoever (says he) seriously considers the excellent argument of Lord Somers in *the banker's case*, will not be bottom himself upon the very same maxim which I do? and one of his *principal grounds* for the *alienability* of the domains in England, contrary to the maxim of the law in France, he lays in the constitutional policy of *furnishing a reward to public service*; of making that reward the *origin of families*, and the foundation of *wealth* as well as of *honours*."

* "Speech on presenting, on the 11th of Feb. 1780, a plan for the better security of the independence of parliament and the economical reformation of the civil and other establishments." Dodsley, 1780, 3d edition. The part from which the following extracts are made is contained in pages from 62 to 68 inclusive.

† Page 63.

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Then, to the word *England*, comes a note, which says, "before the statute of Queen Anne, which limited the alienation of land."

OBSERVATIONS.

Proof. At the time of this excellent argument of Lord Somers," (7th Will. III.) the whole of this domain was alienable; alienable to the utmost farthing; and, so faithfully and efficiently had it been applied to this its destined, and, as we are desired to persuade ourselves, properly destined, purpose, as to have brought the subject-matter of it to that state, of which a description may be given in the words of the existing committee on finance.*

"The right of the crown over its own demesne lands was formerly" say they, 3d Report, p. 127, "as complete as its power of conferring offices; and yet the use which was made of that part of its prerogative occasioned parliament frequently to interpose; and particularly, after the crown had been greatly impoverished, an act passed, whereby all future grants, for any longer term than thirty-one years, were declared void."

"The misfortune," continue they, "is, as Mr. Justice Blackstone remarks, that the act was made too late, after every valuable possession of the crown had been granted away for ever, or else upon very long leases."

Such was the observation suggested by the case to Mr. Justice Blackstone; viz. that "*it was made too late.*"

But, according to the *excellent argument* of the excellent Lord Somers, it was made *too soon;* for the use of it — the "principal" use — at least if the excellent Mr. Burke is to be believed, was, in the conception entertained on the subject by the excellent Lord Somers, the supplying the requisite matter for this "constitutional policy" to operate upon; — viz. "the constitutional policy of furnishing a permanent reward to public service; of making that reward the origin of families, and the foundation of wealth as well as honours."

Now, of this statute of Queen Anne (as far as it went) the effect was to *counteract* the "constitutional policy," and render it, together with the excellent "*maxim*" on which the excellent law lord is said to have "*bottomed himself,*" incapable of being pursued; and, to a plain and un-law-learned understanding, they cannot both be good, viz. the *policy* and the *statute:* the *policy* by which the alienation of the property in question for that purpose was prescribed, and the *statute* by which the alienation of that same property, for that or any other purpose, was prohibited.†

Proposition 3. The progress of this revolution ought not to be stopped, till it has received its consummation as above described,

* This was in March 1810.

† After all, it was not by the "*excellent*" Lord Somers that this profundity of policy was, or, considering the side taken by him, could consistently have been displayed. It was to another "*excellent*" law-lord, though not noble lord, viz. the Lord Chief-Justice *Holt*, that the glory of it should have been ascribed.

"Rewards and punishments," says he "are the supporters of all governments: — and for that reason it is that there ought to be a power in all governments to reward persons that deserve well:"[a] — proof sufficient to the excellent Lord Chief-Justice that it was no more than right and fitting, that it should always be, and so long as anything was left, remain in the King's power, to give away, to anybody he pleased, whatsoever part of the people's money he could contrive to lay his hands on.

"But it is to be objected," says the excellent Lord Chief-Justice, "that the power in the King of alienating his revenues may be a prejudice to his people, to whom he must recur continually for supplies." But to this objection, the excellent Chief-Justice had his answer ready: — "I answer," says he, "that the law has not such dishonourable thoughts of the King, as to imagine he will do anything amiss to his people in those things in which he has power so to do." Reason sufficient with the excellent Chief-Justice to trust the King thus in the lump, with the arbitrary and uncontrouled disposal of men's properties; — reason not less sufficient might it have been, for trusting the same royal person, on the same terms, with their liberties and their lives. This was *Whig common law.* What more could a King have had or wished for, from *Tory common law?*

This theory, then, which to the views of our orator being so convenient, was in the judgment of the orator so "*excellent:*" — this theory was the theory — not of the excellent Lord Keeper, but of the excellent Lord Chief-Justice. Not that by this mistake of John for Thomas any very material injustice was done to the excellent Lord Keeper; for, in this instance, if anything was wanting in *theory* (not that any such deficiency appears) it was made up in *practice.*

To the profits of the office — those profits, for an eventual supplement to which even Lord Eldon required, or at least obtained, not more than a floating £4000 a-year — these profits not being sufficient for "*making reward the origin of that family;*" for affording to it a sufficiently broad "*foundation of wealth as well as of honours,*" — a pension for life of £4000 a-year was added: £4000 a-year, *then* equal at least to £12,000 a-year *now.* This, as not being in fee, being still insufficient, an estate,[b] which *was* and *is* in fee, was added: an estate which, according to his own

[a] Modern Reports, Vol. V. pp. 54, 55; 7 Will. III. The banker's case.

[b] The manor or manors of *Rygate* and *Howleigh*, which according to the Tory House of Commons were at that time worth *upwards* of £12,000, but according to the noble and excellent defendant "far short" of that "value:" though how far short, he was not pleased to say: also divers other good gifts, the amount of which became the matter of so many disputes, which, the impeachment of the excellent lord not having come to a trial, was never settled. — *Vide* State Trials, Vol. V. pp. 350, 351, 352.

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i. e. so long as any part of the property of the public (understand of the people) remains unapplied to the purpose of giving effect to this "maxim" with its "constitutional policy;" viz. "the furnishing a permanent reward to public service; of making that reward the origin of families, and the foundation of wealth as well as honours."

admission and valuation made for the purpose, was producing at that time no more than a poor £2100 a-year, if the statement thus given in general terms by the learned and noble grantee for the purpose of his defence against an impeachment, is to be taken for correct: how much at present, is best known to some noble or not noble proprietor or other, related or not related, into whose hands it has passed.

But this £4000 a-year, and this £2100 a-year, and this £12,000 a-year, more or less, these et cæteras, were they, any of them, ever begged *for* by the excellent lord? Oh no: so he himself expressly assures us: — begged for, no more than the tellership was begged for by Mr. Yorke. These are of the number of those gracious designs, which, till the very moment of their taking effect, are never known of. While the eyes of the right honourable person are, as usual, fixed on heaven, the grant is slipped into his pocket, and when, putting in his hand by accident, he feels it there, his astonishment is not inferior to his gratitude.[a]

Note, that for no such expense as this, in so rare an article as wisdom, was there any the smallest need. In the time of Charles the Second (the Bank of England not as yet born or thought of) money to the amount of "above a million," (a vast sum in those days) part their own, part that of their *customers*, having been lent to the King by a set of *bankers*, was by him, the said King, converted to his own use: in court English, "*the Exchequer was shut up.*"

In a succeeding reign, viz. that of King William, the question was, whether there was power in the crown, sufficient for applying a particular branch of its revenues in part restitution of the profit of this robbery. Yes, says this Lord Chief-Justice: for the branch in question (a new one — a portion of the excise) was given to the King in exchange for an old branch, viz. the branch called "*wards and liveries.*" Whoever has an estate *in fee*, may alienate it: in the "*wards and liveries*" the King had an estate in fee! — the excise was by act of Parliament given to him in lieu of those "*wards and liveries:*" and what is more, by the express words of the act, he was and is empowered to alienate it. This, supposing the construction put upon the act not inconsistent with the words of it, might, one should have thought, have sufficed for argument. But this would not have sufficed to show the learned lord's acquaintance as above with the depths of policy: nor yet the "*honourable thoughts*" entertained of the King by the law: — and so, *ex abundantiâ*, the sage reasons that have been seen were added.

Whatsoever money the King could contrive to lay his hands upon, *that* the virtuous Whig Chief-Justice was content to see him waste. Why? For this plain reason: because "the law has not" — (*i. e.* he, his predecessors and colleagues, had not) any such dishonourable thoughts of the King "as to imagine he will do anything amiss to his people in those things in which he has power so to do."

And what was the incident that called forth their effusion of faith and confidence? It was that of a king having robbed his subjects: robbed them of so much money — and for what? to hire men with, for robbing in conjunction with their enemies[a] — for robbing and murdering their allies.[b]

Now, therefore, in my humble conception of the matter — whosoever it was that went *thus far*, whether it was the excellent Lord-keeper, whether it was the virtuous and intrepid Whig Chief-Justice went so far, it is no very easy matter to imagine how the learned colleagues of the Chief-Justice, or any of them, should (as Edmund Burke says they did) "go further:" and that for any imaginable set of existing circumstances, for any imaginable purpose of *accommodation, convenience, reward of merit, reward of eminent services*, and so forth — not to speak of reasonable, useful, and honest purposes: — it went far enough of all conscience.

Of these "honourable thoughts" one effect was to reduce to such a state of debility the learned thinker's learned imagination, as to disable it from representing to him as *possible*, a state of things which his memory, if consulted upon the occasion, could not but have represented to him as realized, and that no more than seven years before: that state of things expressed — the half of it by the lawyer's word *abdication*, the whole of it by the people's word *revolution*, but for which (I mean the revolution,) his master could not have been a King, nor himself a Lord Chief-Justice. This master of his was now King: and now, whatsoever power the King has, is become incapable of being used amiss; misuse being in such hands either the same thing as use, or (what comes to the same thing) converted into use.

This is the way the sort of a thing called common law is made. Not content with exercising the *power* which he *has*, nothing will serve a man but he must display the *wisdom* which he has *not:* he bewilders himself and raves: and his ravings as often as it happens to them to suit the interest or the humour of those that come after him, these ravings of his become law.

Principles and practice together, nothing could be better matched: practice found by the excellent Lord-Keeper — principles by the excellent Lord Chief-Justice.

Note, that while lawyers as well as favourites were thus fattening (for the reign of William, though a reign of salvation for England and for Europe, was a reign of waste and favouritism,) the State, for want of common necessaries, was continually on the brink of ruin: expense unprecedented, ways and means scanty, deficiencies abundant, losses distressing, credit at death's door.

[a] Of the relative quantity of the slice thus taken, relation being had to the quantity left, some conception may be formed from a note of Mr. Rose's, in his "Observations respecting the public expenditure and the influence of the crown," 2d edition, 1810. "In fifteen years to 1715, the whole income from crown lands (says he) including rents, fines, and grants of all sorts, was £22,624, equal to £1,500 a-year."—Journals of H. C.. Vol. XX. p. 520.

[a] The French. [b] The Dutc

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Proof. (Observations.) For, already, at the time of this excellent argument, had this quiet and gradual revolution made such progress, that within a trifle, the domain in question — a mass of property originally sufficient for the peace establishment of the country — had been thus disposed of.

There remained, it is true, and still remains, in part at least as yet undisposed of in the same unconstitutional way, the private property of individuals.

But a principle adequate to this purpose had already been established — established by the same or another provident set of hands — and, at the time of this excellent oration, still continued to be acted upon; yes, and still continues to be acted upon, under the eye and cognizance, and without censure from the above-mentioned existing committee, by which a diamond from this same excellent oration has, without acknowledgment, been picked out, — picked out and employed in giving additional lustre to the jewel for which we are indebted to their hands.*

* Burke, p. 62, in the paragraph immediately preceding the one above quoted: — "I know, too, that it will be demanded of me how it comes, that since I admit these offices" (sinecures) "to be no better than pensions, I chose, after the principle of law had been satisfied," (meaning the principle, with how little propriety soever it can be termed a principle of law, the principle of policy and humanity, that forbids the abolition of them, though it be by the legislature, to the prejudice of existing rights of property, *i. e.* without adequate compensation) "I chose to retain them at all." This being the question, now, reader, whether you have, or have not, read Part I. of this Tract, Chapter III. *On Sinecures*,[a] be pleased to observe the answer — "To this, Sir, I answer, that conceiving it to be *a fundamental part of the constitution of this country*, and of the *reason of state* in every country, that there must be *means of rewarding public service*, these means will be incomplete, and indeed wholly insufficient for that purpose, if there should be no further reward for that service than the *daily wages* it receives during the pleasure of the Crown."

Thus far Edmund Burke: and thus far, and without inverted commas, or any other token of adoption, the existing Committee on Finance, (3d Report, p. 126,) substituting only for the words — "*To this, Sir, I answer, that conceiving*" the words "at the same time regarding."

Here we see what, according to the logic of the rhetorician, constitutes a sufficient reason why the quantity of annual emolument in question should not be put into the shape of *pension*, but be continued in the shape of sinecure. And this is the flourish which, with the question between sinecures and pensions before their eyes, the committee copy: and though like the orator in the way of *concession*, exhibit not the less in the character of a "fundamental part of the constitution of this country."

This principle consists in the *habit*, which under common law is the same thing as the *power*, of creating *offices*, with fees annexed to the same, and receivable by the officers successively invested with the same: of creating these fee-gathering offices, or, what comes to the same thing, annexing more and more fees to offices of this sort already created; fees that, as *taxes*, are exacted by the sole authority of some official person or persons, without allowance, special or general, from the representatives of the people in parliament.

This principle may be seen flourishing to this day, and with unabated vigour; for so long as the word *tax* is not mentioned, and instead of a contribution to a *tax*, the money levied is called *a fee*, and instead of the pocket of the public, the pocket it goes into is that of the imposer, and the assembly in the composition of which the people have some share, have no share in the imposition of it, nothing can exceed the acquiescence and complacency with which the good people of this country, as well as its parliament, are content to view it; especially when the tax thus imposed, is imposed upon that class of the community which is composed of the distressed members of all the other classes, and by so fast a friend to the rights of the people and to *liberty*, and to *juries*, and to the laws which forbid the *levying money* upon the people without consent of parliament, and to the *magna charta* which forbids the *delaying of justice*, and to the *magna charta* which forbids the *sale of justice*, and to the *magna charta* which forbids the *denial of justice* (whether by putting a price upon it beyond what they have to give, or otherwise) as the noble Ex-Chancellor, then Chancellor, legislating with the advice and consent of his right honourable subordinate, whose experience in equity business found such a contrast to that of the common-law-learned novice.† — *See note* †, *next page.*

[a] See Advertisement p. 278.

SECTION IV.

CONCERNING TITLE TO REWARD.

Proposition 4. In the course of the disposition thus made of the whole property of government, with the growing addition of the whole property of the people, the plea of its having for its use and object the furnishing a reward to public service, ought never to be any other than a false pretence: at any rate, nothing ought ever to be done to prevent its being so.

Proof. (Observations.) Four modes of disposing of the public money, under the notion of reward for public service — extraordinary public service — all of them in frequent use, lay open to the rhetorician's view: — 1. Remuneration by *act of parliament*; 2. Allowance out of *secret service money*; 3. *Pensions* granted by the crown *without concurrence of parliament*; 4. *Sinecure offices* granted by the crown *without concurrence of parliament.*

In the case of remuneration by act of parliament, everything is open to *view*; everything is open to *discussion*: — 1. The nature and *reality* of the *service* supposed to have been performed; 2. The *part taken by the person* in question, in the rendering of that service; 3. The *importance* of the *whole* service, and of the *part* taken by him in the ren-

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dering it; 4. The *magnitude* of the proposed *reward*.

In the case of remuneration out of *secret service money*, all these particulars are left in

† No. I. List of Law Sinecures, granted in *fee*, with the masses of *emolument* respectively attached to them; gleaned and put together from the reports of the Finance Committee of the year 1797-8 and 1807-8: distinguishing as well the different descriptions of the Offices and Officers in question, as the different masses of emolument respectively received at the two different periods, as exhibited by the two committees: with references to the Nos. of the Appendixes and pages of the two Reports; the Reports being — of those of the committee of 1797-8, the 29th, and of those of the committee of 1807-8, the 3d.

1797-8. No.	1797-8. Page.	1807-8. No.	1807-8. Page.	Description, as per 1797-8.	Description, as per 1807-8.	Annual Sums received, as per 1797-8.	Annual Sums received, as per 1807-8.
				(1) I. COURT OF CHANCERY.			
1 K. 7	84-5	72	280	1. Keeper or Clerk of His Majesty's Hanaper in Chancery, Earl of Northington, and his heirs, during the lives of (see next column.)	1. Hanaper, Clerk of; sisters and co-heiresses of the Earl of Northington.	£ 1,511	£ (a) 2,070
				(2)			
2 K. 3 a K. 3 b	62-3			2. Register of the Court of Chancery, Duke of St. Alban's, or Drummond, his Mortgagee, (see Vesey, Jun. V. 433.)	2. No mention.	—	640
				(3) II. COURT OF KING'S BENCH			
3 L. 16	160-1	72	280	3. Comptroller of the Seals of the courts of King's Bench and Common Pleas, his Grace the Duke of Grafton.	3. Seal Office of King's Bench and Common Pleas, Duke of Grafton.	400	2,886
				(4) III. COURT OF COMMON PLEAS.			
4 M. 14	190-1	72	281	4. Hereditary Chief Proclamator, J. Walker Heneage.	4. Chief Proclamator, Arabella Walker Heneage, widow.	100	100
				(5)			
5 M. 1	172-3	72	281	5. Custos Brevium, C. P. Honourable Lady Louisa Browning, one-eighth; Hon. Lady Robert Eden, one-sixth; John Hankin, Esq. tenant by the courtesy, one-third; Edward Gore, Esq. in right of his wife, Lady Mostyn, one-third.	5. Custos Brevium, Honourable Louisa Browning, Sir Fr. M. Eden, Lady B. Mostyn, Joseph Hankin.	456	929
				(6) IV. COURT OF EXCHEQUER.			
6 N. 29	238-9	72	281	6. Hereditary Chief Usher of the Exchequer, with the appurtenances thereof, John Walker Heneage.	6. "Chief Usher, Arabella Walker Heneage, in fee, under grant from Henry II. as well as the other office."	133 &c. (b)	137

Reference to the Reports of the Finance Committees.

No. (1) 1797-8, K. 7. p. 84, 85 — 1807-8. No. 72, p. 280.
No. (2) 1797-8, K. 3 a, K. 3 b, p. 62. 63 — 1807-8. No mention.
No. (3) 1797-8, L. 16. p. 160, 161 — 1807-8, No. 72, p. 280.
No. (4) 1797-8, M. 14. p. 190, 191 — 1807-8, No. 72, p. 281.
No. (5) 1797-8, M. 1. p. 172, 173 — 1807-8, No. 72, p. 281.
No. (6) 1797-8, N. 29. p. 238, 239 — 1807-8, No. 72, p. 281.

(a) Gross £1994. The beneficial interest is not in fee: the reversion was granted to a pair of Thurlows in June 1792.— 27th Finance Report, 1797-8, p. 84.
(b) "Viz. an ancient allowance of 5d. a-day, (called *diet money*) during the time the court is open, which is uncertain."— 27th Finance Report, 1797-8, N. 29 (a) p. 238.

Thus, from this Table, it appears, that of the four great Westminster-Hall Courts, there is not one in which the principle of taking the property of the distressed to make fortunes for court favourites, or, in the orator's language, to "*make it the origin of families, and the foundation of wealth and honours*," was not applied, — not one in which the application of it is not to this very day continued. A natural question here is — how in so great a length of time it comes to have made so small a progress? The answer is — that in the hands of the King, this mine having, soon after its discovery, been worked too openly and too rapidly, the consequence was, that the thus working of it received the check we hear so much of, and care so little about; and that from that time it was given up to those useful servants of his, whose professional dexterity was now become necessary to enable a man, when working under the Rose, to make a living profit out of it.

The earliest instance, of which any effect or memory is now remaining is, as the table shows, of as early a date as the reign of *Henry the Second*. Soon after him came *King John*, whom, besides his *Magna Charta*, so many details that have come down to us on record prove to have kept an open shop for the sale of the commodity which went by the name of *justice*, and in which the prices were not *then* in any sort, as *at present* they are in some sort, fixed. In King John's reign comes this *Magna Charta*, and thenceforward, so far as concerned the sort of "*public service*" rendered by the *Gavestons*, the *Spencers*, and the *Mortimers*, this source of "*permanent reward to public service*" was nearly dried up; and for what few drops have here and there been collected by the successors of those accomplished gentlemen, they have been forced to enter into a sort of partnership with the gentlemen of the long robe.

Had it not been for the obstruction just mentioned, the present amount of that part of the produce of the *stamp duties* which is levied upon those who are distressed, whether by or for want of the commodity sold under the name of *justice*, would have composed but a part, and that a small one, of that part of public money which would have followed the fate of the crown lands, under and by virtue of the principle thus maintained by Holt, and fattened upon by Somers. —

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darkness; and in time of *war*, and thence at all *other* times (since there are none in which the approach or danger of war may not be imminent,) it being necessary that in the hands of the administration there should exist means of purchasing services, such as under any apprehension of disclosure would be unobtainable: hence a fund for this purpose ever has been, and ever ought to be, on foot.

In the case of *pensions*, some of the above four particulars are open to *discussion*: two of them, and two only, *are* open to view; viz. 1. The *person on whom* so much of that matter, viz. *money*, which is in use to be applied, and in this case is applied, to the purpose of remuneration, has been bestowed;—2. The *quantity* of that matter thus *bestowed*. What is *not* open to view is—whether it is under the *notion* of his having rendered *any* public service, that the money has been bestowed; much less whether such notion, supposing it really entertained, be in any degree *just* or no.

4. In the case of *sinecures*, he saw all these helps to misapplication having place, and, as compared with the case of *pensions*, acting in much greater *force*. In the case of a pension, what is bestowed constitutes a new article, put upon an already existing list: a list which, if not already public, is liable to become so at any time;—a list which, in the meantime, whether made known or not to the *public*, cannot but be kept constantly in view by various members of administration, if it were only lest the fund on which it is settled should be overloaded;—a list such, that no fresh article can ever be placed on it, without producing a fresh *sensation*, as constituting a manifest addition to the mass of public burthens; and in relation to which it is impossible but that to many persons the question must occur—on what *grounds*, and with what *propriety*, has this addition been made?

In the case of sinecures, not one of these spurs to attention had, in *his* view, any more than they have at present, any existence. Sinecure list, none: no, nor so much as a future possibility of making out any such thing, without a course of intricate inquiry, such as even now, in the fourth year of the sitting of a second finance committee, has not been completed. A sinecure office falling

I say, but a small part: for had the mine continued in individual hands, with the power and capital of the King openly employed, as under King John, in backing them, it would have continued to be worked with that zeal and consequent success, by which labour in private is, so much to its advantage, distinguished from labour on public account: and supposing any remnants of it, as of the crown lands, to be still remaining, the Percevals of the present day, instead of being occupied in the augmentation of those taxes on distress for the benefit of rich and poor together, defending inch by inch, and not always without loss, those parts of the produce which stand appropriated to the enrichment of the rich, would have been exclusively employed in the more agreeable occupation of giving additional breadth to "*the foundation of wealth as well as honours*" upon the plan here sketched out by Edmund Burke, and with as little reserve or mystery as was found necessary by King John, in the halcyon part of his days.

In the court of Chancery there exists a set of men called from their number *the sixty clerks*, whose situation is something compounded of or intermediate between, that of an *officer of the court*, and that of an *attorney*.

They are *officers of the court*, inasmuch as, through an intermediate nomination, they are nominated by a subordinate *judge* of the court (the Master of the Rolls,) and inasmuch as in every cause the parties on each side are obliged to employ one or other of them: they are *attorneys*, inasmuch as they are *agents* of the *parties*, and, on each side of a cause, the party or parties, through the medium of their respective attorneys (called here solicitors,) have their choice which of them to employ.

In the same court there exists another set of men called the *six clerks*, whose situation seems to be purely that of an officer of the court. To each of these *six clerks* belongs the nomination of *ten* out of the *sixty clerks;* which nominations he either sells or gives, whichever mode of disposition happens in each instance to be most for his advantage.[a]

Of these six clerks, the nomination belongs to the Master of the Rolls for the time being: which nomination, like the Lord Chancellor and Chief Justices of the King's Bench, and Common Pleas, he in like manner either sells or gives, according to the mode of disposition that happens to be most to his advantage.

The greater the annual value of a *sixty clerk's* place, the greater the value of the place of a *six clerk* who has the gift or sale of it. The greater the value of a *six clerk's* place, the greater the emolument of the place of the Master of the Rolls who has the gift or sale of it.

By order of the Court of Chancery, dated 26th February 1807, signed by the Lord Chancellor, *Lord Erskine*, and by the Master of the Rolls, *Sir William Grant*, by whose advice and assistance he states himself as acting therein, a new "*schedule of fees*" is established and authorized to be taken by each one of those sixty clerks:—fees described in so many articles, 43 in number, and the amount avowedly increased in the instance of each article.

A prior instance had been found, in which, in like manner, viz. by a law enacted in the same way by the joint authority of the two judges, bearing the same offices, money had in this way, about the middle of last century, been levied upon those children of distress called *suitors* without consent of parliament. Coupled with *power*, *sinister interest* begets *precedent*, and precedent *begets*, or rather precedent *is*, *law*.

Of the two modes in which, without consent or privity of parliament, law is made by the sole authority of the King's nominees in the character of *judges*, this (it must however be confessed) is beyond comparison the least mischievous; it not involving, as the other does, the attribute of uncognoscibility, and the tyranny of an *ex post facto law*.

[a] Harrison's Chancery, I. 61, Ord. Can. 83.

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vacant, the vacancy is in case of this inefficient, as in the case of any efficient sort of office, filled up in course—filled up under no other impression than the general one, viz. that in the list of offices, as often as one name drops out, another must according to usage be put in the room of it.

In two different situations, he saw the same set of hands, viz. those of the servants of the crown, habitually employed in disposing of the property of the public, whether to the purpose, real or supposed, of remuneration, or to any other purpose. In two different situations, viz. out of parliament and in parliament: in parliament, since without their concurrence, even in parliament, no such power can, under the established rules, be exercised. Of this difference, what is now, what in his view could have been, the consequence? Disposed of *in* parliament, the money had never been disposed of, but that to the misapplication of it there had been *some* check, though how far from being so effectual a one as might be wished, is but too notorious. Disposed of *out of* parliament, as in the shape of a sinecure emolument, the misapplication of it had never experienced, nor in the nature of the case was capable of experiencing, any check whatever. It is in this shape that we see him defending it.

Of this state of things, the consequence was and is as obvious and natural as the existence of it is incontestable. When, at the expense of the people, on the ground of service rendered to the people, a case can, it is supposed, be made, be it ever so weak a one, recourse is had to parliament, and parliament is the hand by which the favour is bestowed. When no such case can be made — when the very mention of public service might be regarded as mockery and insult, when the annihilation of the precious matter thus bestowed would be a public blessing, a secret hand acting out of parliament, is the hand occupied in such service: windfalls are waited for, tellerships are bestowed.

Whatever you want in force of *reason*, make up in force of *assertion*. Whatever is wanting in *merit*, make up in *eulogy*. Maxims these, the use and value of which are perfectly understood by sophists of all classes.

Our rhetorician goes on: "*It* is indeed" (meaning by *it* the principle which prescribes the dividing the substance of the people — among great families, and families that are to be made great by such means) — "it is indeed the only genuine, unadulterated origin of nobility." Peculation the only genuine and unadulterated origin of nobility! What a character of nobility! — what a plea for the House of Lords! — what a lesson to the people!

"It is," continues he, "a great principle in government—a principle at the very foundation of the whole structure." O yes! such a principle exactly as a running stream would be, running under the foundation of a structure erected on a quicksand.

SECTION V.

CONCERNING VIRTUOUS AMBITION, GRATITUDE, AND PIETY.

Propositions 5, 6, 7, 8.

Proposition 5. When ambition is virtuous, nothing but money is capable of acting with effect as an incitement to it: power in whatever shape — power of management — power of patronage; dignities, honours, reputation, respect — by whatever cause created, are all without effect.

Proof. "Indeed no man knows," continues the rhetorician, "no man knows, when he cuts off *the* incitements" ("*the* incitements," *i. e.* the sole incitements) "to a virtuous ambition, and the just rewards of public service, what infinite mischief he may do his country through all generations. Such saving to the public may be the worst mode of robbing it."

"The incitements;" meaning those alone which are composed of money. For thereupon comes a panegyric on the virtue of money—an eulogium composed of a string of phrases, which in the commonplace book of a university poem-maker, might, if the subject of the poem were the virtues of money, perform the sort of service performed to genius in the bud in that useful manual called the *Gradus ad Parnassum*, under the head of *synonyms* or *phrases*.

"The means for the repose of public labour" — "The fixed settlement of acknowledged merit" — "A harbour into which the weather-beaten vessels of the state ought to come; a retreat from the malice of rivals, from the perfidy of political friends, and the inconstancy of the people."

How pitiable, under this view of it, must be the condition of every man, who without a certainty of raising a family into overgrown opulence at the expense of the people, employs his time, or any part of it, in any branch, at least in any of the higher branches, of the public service! — of every member of parliament, at least (for to honourable gentlemen of this description do the regards of the rhetorician appear on this occasion to have confined themselves)—of every member of parliament who ventures his bark in any such stormy latitude, without the certainty of a "harbour" in the shape of an auditorship, or a cut-down tellership at least!

Storms and tempests, forsooth! Yes, such as we see on canvas at Covent Garden, and hope to see again at Drury Lane. Labour as severe almost as what is undergone on the cricket ground, or at the card table, and stand-

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ing about as much in need of remuneration at the expense of the people: labour such as, without receiving the value of a farthing from any hand that did not itself cheerfully take the money out of its own pocket, *Mr. Gale Jones* and his company would have undergone, and continued to undergo, if the Honourable House could have prevailed upon itself to suffer them: labour far short of that which on the same ocean the newspaper reporters were in the habit of undergoing, and if Mr. Yorke and his honourable and worthy nephew had suffered them, would have continued to undergo, without ceasing: and even (how "incomplete" soever, "and indeed wholly insufficient for that purpose," "for that public service must" (as Mr. Burke says) "be those means of rewarding" that "public service") yes, even without "further reward for that service than the daily wages received during pleasure: — daily labour beyond comparison more compulsory, more assiduous, more severe, than that which, besides so many contingent sweets, has present honour for a sweetening to it; — daily labour without pension of retreat, without provision for superannuation — provision, actual or eventual, for widows or mistresses, children or grandchildren, uncles or aunts, brothers or sisters, nephews or nieces; without power either of management or patronage — without either possession or prospect of honour, dignity, reputation, or respect, in any shape.

Proposition 6. So as the place be permanent, the hope of receiving it, how large soever the mass of emolument attached to it, "*does not operate as corruption*" — does not produce "*dependence*."

Proof. "Many of the persons who in all times have filled the great offices of state, have," says he, "been younger brothers, who had originally little, if any, fortune. There ought to be," continues he, "some power in the crown of granting pensions out of the reach of its own caprices." — Caprices! The hand by which the whole property of the people is thus to be disposed of, has it then its caprices? O yes, for the moment, and for the purpose of the argument. What is it that it may not happen to a thing to *have* or *not* have, for the purpose of the argument? "The entail of dependence," continues he, "is a bad reward of merit."

"I would therefore leave to the crown," says he (viz. to the "*caprices*" of the crown) "the possibility of conferring some favours, which, whilst they are received as a reward, *do not operate as corruption;* — as if, to this purpose, call it a good, call it a bad one, a pension might not be made to operate with the same effect as a sinecure, both being equally for life.

Proposition 7. When a man is in parliament, whatsoever be the conduct of the servants of the crown, and whatsoever be the quantity of money he may gain or hope to gain by giving them his indiscriminating support, virtue requires that, to protect him against the charge of corruption, he be provided with the plea of *gratitude;* which plea pleaded, acquittal follows of course.

"When men receive obligations from the crown through the pious hands of a father, or of connexions as venerable as the paternal, the dependencies" (says he) "which arise from them are the obligations of gratitude, and not the fetters of servility. Such ties" (continues he) "originate in virtue, and they promote it."

Proposition 8. When a man happens to have children, "piety" on his part consists in filling their pockets with public money.

Proof. The epithet "pious" applied with so much unction to paternal hands thus occupied.

Observations. In the wolf's bible, piety would indeed naturally enough consist in providing lamb, as much as she could lay her paws upon, to feed her cubs with. But in the shepherd's bible, at least the good shepherd's bible, piety will probably be found rather to consist in keeping the lambs from being disposed of to such pious uses. The orator, though not a no-popery-man, was fond of his bible, and here we have a sample of the uses he was fond of making of it.

SECTION VI.

CONCERNING PARTY-MEN AND THEIR PRINCIPLES.

Propositions 9, 10.

Proposition 9. Men, who have at any time joined together in the way of party, ought not ever, any one of them, to differ from any other; nor therefore to act, any one of them, according to his own conception of what is right. Sinecures, if not absolutely necessary, are highly conducive at least, and thence proportionally useful, to the purpose of preventing all such differences.

Proof. "They" ("such ties" as above) "continue men" (says he) "in those habitudes of friendship, those political connexions, and those political principles" (we have seen what principle) "in which they began life. They are antidotes against a corrupt levity, instead of causes of it."

Observations. Sinecures, according to this account of them, seem to be as necessary to secure fidelity at the expense of sincerity in parliament, as *test oaths* and subscriptions are to secure various good things, at the expense of reason or sincerity, there and elsewhere.

Two things here call for notice: the proposed *end*, and the proposed *means*. Proposed *end;* each man's persevering in the *principles*

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(whatever is meant by *principles*) in the professions and habits, right or wrong, in which he "*began life;*" i. e. which it happened to him to have imbibed from the instructors under whom it had happened to him to be placed, and the society in which it had happened to him to have lived. Proposed *means;* his having got into his hands as much public money as his parents and other connexions could contrive to put into them by means of sinecures. *Means* and *end*, it must be acknowledged, are not ill matched.

Proposition 10. On a change of ministry, were it not for the sinecures, the *comers-in* would cut the throats of the *goers-out;* whereupon "the "*sons*" of the goers-out would "*cringe*" to the same *comers-in* (now ins) and "*kiss their hands.*"

Proof. "What an unseemly spectacle would it afford — what a disgrace would it be to the commonwealth that suffered such things, to see the *hopeful son of a meritorious minister* begging his bread at the door of that treasury from whence his father dispensed the happiness and glory of his country? Why should he be *obliged to prostrate his honour, and to submit his principles* at the levee of some *proud favourite*, shouldered and thrust aside by every impudent pretender, in the very spot where a few days before he saw himself adored? — *obliged to cringe* to the author of the calamities of his house, and to *kiss the hands* that are *red* with his father's blood? No, Sir! — these things are unfit, they are intolerable."

Observations. And so there are, it seems, such things as proud favourites. But if so, what sort of food is their pride fed upon? Sinecures? And if so, is not one of these *proud favourites* on every occasion a dangerous rival to the hopeful son of a meritorious minister? But the plan was — that there should be enough of them for everybody: and thus everything would be as it should be.

SECTION VII.

CONCERNING MINISTERS AND THEIR DUTY TO THEMSELVES.

Propositions 11, 12, 13, 14.

Proposition 11. The danger of a man's being too bountiful to himself, when, in and by the adjudication of reward claimed on the ground of service said to have been rendered to the public, he is allowed to be judge in his own cause, affords no reason, at least no conclusive reason, against the allowing him to act in that character.

"As to abuse," says he, "I am convinced, that very few trusts in the ordinary course of administration have admitted less abuse than this. *Efficient ministers have been their own paymasters.* It is true. *But their very partiality has operated as a kind of justice;* and still it was service that was paid. When we look over this Exchequer list, we find it filled with the descendants of the Walpoles, of the Pelhams, of the Townsends, names to whom this country owes its liberties, and to whom his Majesty owes his crown.* It was in one of those lines that the immense and envied employment he now holds, came to a certain Duke," ("the Duke of Newcastle," says a note) "whose dining-room is under the House of Commons, who is now probably sitting quietly at a very good dinner directly under us, and acting *high life below stairs*, whilst we his masters are filling our mouths with unsubstantial sounds, and talking of hungry economy over his head."

For merited wealth and honour he declares his "*respect:*" "respect" which accompanies it "through all its descents, through all its transfers, and all its assignments." In plain English, the object of his respect is wealth itself, whatever hands he sees it in. As for "*original title,*" and "*first purchase,*" and the epithet "*merited,*" prefixed to "*wealth,*" all this is for decency and delusion. For as to *merited*, the orator's notions about merits have surely by this time become sufficiently apparent.

And as to *title*—what is it that on the subject of title, specific title, so much as asserted, not to speak of proved, he ever drops so much as a hint of his looking upon as requisite? No: with him, to the purpose of approbation, though without reason, as in a lawyer's point of view, to the purpose of protection, for the best reason, possession of wealth, acquired at the public expense, is regarded as proof of title: and that proof not only presumptive and provisional, but conclusive.

As for *transfer* and *assignment* — *wealth*, sure enough, is *transferable* and *assignable*. But *merit?* is *merit* too a subject of bargain and sale? A manor? yes. But *manners*, those "*manners*" which, in the language of *Edward the Third's* chancellor, "maketh man," are these manners with an *e*, appendages and appurtenances that by the attraction of cohesion adhere to, and are rendered inseparable from, the manors with an *o?*

Wealth or power, wherever you see them, "*prostrate*" yourself before them: "*cringe* to" them, and though they be "*red with*" your "*father's blood,*" "*kiss the hands*" that grasp them. This is what you are "*obliged*" to do: and that which is matter of obligation, how can it be matter of blame? Such are the

* Their co-operators within doors by hundreds, and without doors by millions, he would have us believe, having had no share in the business, or at least no merit in it. These men stand up in a *room* (*absit verbo invidia*) and pronounce a set of phrases, and by these men alone (we are desired to believe) by these men alone it is, that everything that is done, is done.

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precepts which call for the observance of that pupil whose preceptor is Edmund Burke.

After the predilection thus declared — predilection for *vicarious reward* — in short, for anything that can afford to political rapacity a colour or a cloak to complete the system of corruption and tyranny, what more can be wanting than a like declaration in favour of *vicarious punishment?*

Observations. "But," continues the orator, "he is the elder branch of an ancient and decayed house, joined to, and repaired by the reward of services done by another." Thus far the orator.

"*Done by another.*" Yes, done by George the Second's old favourite minister the Duke of Newcastle, whose culinary profusion and political inaptitude were alike proverbial — whose inefficiency the efficiency of the first Pitt had for such a length of time to struggle with — and whose services consisted in the sacrifice made of his patrimony to his palate and his pride.

"I respect," continues the rhetorician, "the original title, and the first purchase of merited wealth and honour through all its descents, through all its transfers, and all its assignments. May such fountains never be dried up!—may they ever flow with their original purity, and fructify the commonwealth for ages!"

May such fountains never be dried up! exclaims the ejaculation, poured forth with fervency, with almost the solemnity, and with at least the sincerity, of a prayer. "*May such fountains never be dried up!*" — as if he had not all this while in full view a fountain of this sort, the patrimony of the crown, all but dried up, and that almost a century before the utterance of this prayer: as if anything could operate more speedily, or more effectually, towards the drying up of all such fountains, than the acting up to those laws of profusion, to the keeping of which it was the object of this prayer to incline men's hearts.

Proposition 12. If it be admitted that the masses of emolument, respectively attached to the great *efficient* offices, are not excessive, this admission will be sufficient to justify the possessors of them in putting into their pockets additional masses of emolument to an unlimited amount, on condition of creating or keeping on foot *inefficient* offices, to which such additional masses of emolument shall respectively stand attached.

Proof. "If I were to give judgment," says he, "with regard to this country, I do not think the great offices of the state to be overpaid. When the proportion between reward and service," resumes he, "is our object, we must always consider of what nature the service is, and what sort of men they are, who are to perform it. What is just payment for one kind of labour, and full encouragement for one kind of talents, is fraud and discouragement to others."

Observations. True enough. But what is it to the purpose? and what is it that it amounts to? and what is it that by volumes of phrases thus floating in the air would be proved?

"*Not overpaid.*" For the purpose of the argument, let it pass.

"*Not overpaid!*" Admitted. But does it follow that they are *underpaid?* £4000 a-year, or £6000 a-year, not excessive? Good: but does it follow that £23,000 a-year, or that £38,000 a-year, must be added?

Proposition 13. To justify the leaving to the possessors of public offices, in an unlimited number, the power of putting each into his own pocket, and into the pockets of his relatives, and friends, and dependents, and their respective descendents, such supplemental masses of emolument, each to an unlimited amount, it is sufficient to point out one office and *one class* of offices, which present a reasonable claim to larger masses of emolument than what are attached to the rest.

Proof. "Many of the great officers have much duty to do, and much expense to maintain.

"A secretary of state, for instance, must not appear sordid in the eyes of ministers of other nations.

"Neither ought our ministers abroad to appear contemptible in the courts where they reside.

"In all offices of duty," continues he, "there is almost necessarily a great neglect of all domestic affairs. A person in high office can rarely take a view of his family-house. If *he* sees that the *state* takes no detriment, the *state* must see that *his* affairs should take as little."

Proposition 14. In the case of a real efficient office, no mass of emolument which either is or can be attached to it, ever is or ever can be too great.

Proofs. "I am not," says he, "possessed of an exact measure between real service and its reward."

"I am," continues he, "very sure that states do sometimes receive services, which it is hardly in their power to reward according to their worth."

"I do not," continues he, "think the great efficient officers of the state to be overpaid:" he, Edmund Burke, who in so many words has just been saying, "If I knew of any real efficient office which did possess exorbitant emoluments I should be extremely desirous of reducing them. Others," continues he, "may know of them. I do not."

Observations. Of the sincerity of this declaration, no question need be made. If so it had been, that any such office, "*possessing*

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emoluments," which in his eyes were "*exorbitant*," had been known to him, a "*desire*," and *that* an "*extreme*" one, "of reducing" those exorbitant emoluments would have been the result of such *knowledge*. But in his eyes no such emoluments could be exorbitant. Therefore, in his breast the formation of such desire must, notwithstanding the extreme desire he could not but have had to form such a desire, have been impossible.

At that moment, and for the purpose of the argument, such was the ignorance of Edmund Burke that he "was not possessed of," *i. e.* he knew not of, "an exact common measure between real service and its reward." But except Edmund Burke, no man is thus ignorant, any more than Edmund Burke himself could be at any other time than that in which such ignorance had its convenience.

Between "*real service and its reward*," the exact common measure is the least quantity of the matter of reward that he who is able to render the service consents to take in return for it. This is the measure of all *prices*: this is the measure of the value of all good things that are at once valuable and tangible. This is the measure of the value of all *labour*, by which things tangible are produced: as also of all labour by which, though nothing tangible is produced, valuable service in some other shape is rendered. This was the *common measure*, by which the exact value had been assigned to the *coat* he had on his back. This was the exact common measure of the value of those real services which had been rendered him by the person or persons by whom his coat had by means of one kind of brush, and his shoes by means of two others, been qualified for their attendance on the lips, by which this brilliant bubble was blown out.

But (says the sophist, or some disciple for him) there is no analogy (says he) between the service rendered to the public by a minister of state, and the service rendered to one individual, by another individual, who removes extraneous matter from his coat, or puts a polish upon his shoes.

O yes, there is — and, to the purpose here in question, analogy quite sufficient:—

1. They stand upon the same ground (the two services) in point of *economy*. There is no more economy in paying £38,000 a-year for the wearer of the coat, if he can be had for nothing, than in paying £20 for a coat itself, if it can be had for £10.

For the wearer of the coat — I mean, of course, for his services: his *services*—I mean his services to the public, if so it be that he be capable of rendering any.

But the misfortune is, that when once the "*reward* for service" has swelled to any such pitch, any question about the service *itself*—*what* is it? what does it consist in? *who* is it that is to render it? what desire, or what *means*, has *he* of rendering it? of rendering to the public *that* sort of service, or *any* sort of service? Any question of this sort becomes a joke.

Where sinecures, and those "high situations" in which they have now and then become the subjects of conversation among "great characters," are taken for the subject of conversation among little characters in their low situations, questions and answers are apt to become giddy, and to turn round in a circle. What are sinecures of £38,000 a-year good for?—to maintain the sinecurists. What are the sinecurists good for?— to maintain the sinecures. Thus on profane ground. Thus again, on sacred ground:—What are bishopricks good for?—to support bishops. What are bishops good for?— to support bishopricks.

2. So again, as to probability of *efficiency*, and meritoriousness on the part of the *service*. Competition — preference given to the best bidder among candidates bidding upon each other, under the spur applied by that incentive — competition, affords, in the instance of the party chosen, a better chance of fitness for the office and its services, than will in general be afforded by preference given, either without a thought about fitness for the *service*, or about *merit* in any other shape, or with thoughts confined to such merit of which *parliament* is the only theatre, and in the composition of which, obsequiousness is the principal ingredient, and that an indispensable one. But of this proposition the truth, it is hoped, has been rendered sufficiently apparent elsewhere.*

SECTION VIII.

CONCERNING GRATUITOUS SERVICE, AND THE PROFLIGACY INVOLVED IN IT.

Propositions 15, 16.

Proposition 15. — If a man were to decline receiving at the public expense, money which it were in his power to receive without danger either of punishment or of disgrace, it would be a conclusive proof that his designs were to endeavour to filch money from the public, in some mode that would subject him to danger in one or other of the two shapes, or in both.

Proof. "I will even go so far," says he, p. 67, "as to affirm, that if men were willing to serve in such situations" (viz. offices of duty, "*all offices of duty*," p. 66) "without salary, they ought not to be permitted to do it. Ordinary service must be secured by the motives to ordinary integrity. I do not hesitate to say, that *that* state which lays its foundation in rare and heroic virtues, will be sure to have its superstructure in the basest

* Part I. [*Vide* Advertisement. p. 278.]

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profligacy and corruption. An honourable and fair profit is the best security against avarice and rapacity; as in all things else, a lawful and regulated enjoyment is the best security against debauchery and excess."

Observations. — "*If men were willing to serve in such situations without salary, they ought not,*" says he, "*to be permitted to do it.*" Here we have the theory — the waste-and-corruption-defending sophist's theory. What says experience? In Part I.* of this tract may be seen a list, nor that yet a complete one, of men of various classes serving in such situations; and not merely without salary, but without neat emolument in any shape: and as for the not permitting them to do so, whether in such *non-permission*, in whatsoever manner effected, whether by prohibition or otherwise, there would be any, and what use, let the reader, if any such there be, on whom this rhapsody has passed for reason or for reasoning, learn from it, if he be able.

"*Ordinary services,*" says the orator, "*must be secured by the motives to ordinary integrity.*" In Part I.* the reader, it is hoped, has already seen, that for the securing of ordinary service, to furnish any motive whatever is not in the nature of salary: that in so far as ordinary service comes to be rendered, it is by apprehension of eventual *punishment* that it is produced — that all that by salary can ever be done towards the production of it, is by engaging a man to subject himself to such eventual punishment; and that, if so it be, that without salary he is content to subject himself to such eventual punishment, the service (it being ordinary service) is not merely *as* likely, but *more* likely, to be produced *without* salary than *with* it.

"*That state which lays its foundation in rare and heroic virtues,*" says the orator, meaning (for there is nothing else to which the word "*virtues*" can have any application) the disposition manifested by him who "without salary is willing to serve in such situations." Now, in a disposition of that sort, though there be great use, there is nothing that can bear the name of virtue. For (as is sufficiently proved by every morsel a man puts into his mouth, and every draught or sip he takes) so it is, that out of mere *utility*, even though it rise to the height of absolute *necessity*, no such thing as *virtue* can be made. Not that in these "situations," or any of them, whether "served in," "with or without salary," virtue rising even to heroism may not perhaps by accident be displayed: but any such accidental display is quite another business.

Now, if even by actual service in such situations, no "virtue" at all is displayed, or, by the man himself, who thus serves, is so much as conceived to be displayed, whether in the mere willingness so to serve there be any room for "rare or heroic virtue," may be left to any reasonable person to pronounce.

Proposition 16. In any office of duty, "to be willing to serve without salary," is to pretend to "rare and heroic virtue," and is a "sure" indication of "the basest profligacy and corruption."

Proof. "In all offices of duty," says he, p. 66, "there is almost necessarily a great neglect of all domestic affairs. A person in high office can rarely take a view of his family house."——"I will even go so far as to affirm," continues he, p. 67, "that *if men were willing to serve in such situations without salary*, they ought not to be permitted to do it. I do not hesitate to say," continues he, "that that state which lays its foundation in *rare and heroic virtues* will be *sure* to have its superstructure in *the basest profligacy and corruption.*"

Observations. In Part I. of this publication* may be seen a list, though by no means a complete one, of offices "*willingly served,*" not only without salary, but even without emolument; as also a list of others, by and for the obtainment of which, men are found who are willing to be out of pocket.

Observations. The office of *Member of the House of Commons* — the office of delegate of the people in parliament—*is* that, or is it not, in the number of his "offices of duty?" Is that, or is it not, in the number of his "high offices?" Members of the House of Commons as such — the members of the House of Commons taken together — have they not, in conjunction with their duty, more *power* than the members of administration taken together? In the members of the House of Commons taken together, do not the members of administration taken together, behold their *judges*, to whom, for their conduct as such, they are continually accountable, and by whom, under the *form* of an *address* to the king, they are in *effect* displaceable? This assertion, then, to the absurdity of which men are to be made to shut their eyes, by the violence, the unhesitating and audacious violence, with which it is endeavoured to be driven down their throats — try it, try it in the first place upon the members of the House of Commons.

A member of the House of Commons, who, in that his office, "*is willing to serve without salary, ought not to be permitted to do it.*" Whoever does serve on any such terms, is a most "*base and corrupt profligate.*"

From this charge of base and corrupt profligacy, having for its proof the fact of a man's performing public duty without salary, the *impossibility* of obtaining any portion of this his specific against corruption may, it is hoped, according to the orator's system, serve in the character of an *extenuation*, in a case where the inability is real and unaffected.

* *Vide* Advertisement, p. 278.

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But, within the compass of his knowledge, what man, public or private, can be at any loss to find public men—men of distinguished talents—men even of distinguished eloquence—who in that very station have served, and for a long-continued course of years, with as much assiduity as it is possible for men to bestow, even for and with the most overflowing measure of reward?—serving and toiling with an assiduity equal to that of the most assiduous minister all the time, yet without factitious reward in any shape—all the time having at command rewards to the highest amount, and even at the public expense?

Of these base and corrupt profligates, as Edmund Burke called them, and would have persuaded us to think them, I had even began a list—none of them unknown even to Edmund Burke—when I was stopped at once by a concurring cluster of considerations: the personality of the detail, my own incompetency for it, the room it would have occupied, and, as it seemed to me, the superfluity of it.

As between individual and individual, that without expectation of money or money's worth, in any shape, in return, it may not happen to an individual to render a service to another—nay, even to persevere as towards him in a course of service of any length and degree of constancy, and this, too, without any sort of prejudice to probity, not to speak of base and corrupt profligacy, is surely more than any man, even the orator himself, was ever heard to assert: why not then to the public at large—to that all comprehensive body, of which individuals taken together are component parts?

For the labour or the self-denial necessary to the rendering the service to the individual, pure sympathy, pure of all self-regarding considerations, is frequently the sole, and being at the same time the efficacious, is thereby the self-sufficient motive. But when the public is the party to whom the service is rendered; in this case, in addition to whatsoever emotion of sympathy is called forth by the contemplation of the welfare of this aggregate body, in aid of that purely social spring of action, comes the prospect of gratification to the self-regarding affection—*love of reputation*, accompanied or not with the love of that *power*, which, whether put to use or not, reputation brings with her in her hand.

Besides the shape in which he would receive payment for the service, if no more than a single individual were the better for it, he who renders service to the public receives, or at least may not unreasonably expect to receive, payment for it, in those two other shapes besides. Yet, in the eyes of the orator, if he is to be believed, so unnatural and incredible is the disposition to be on any occasion content with this treble payment, that should any such disposition find any man to manifest it, what the orator is quite "sure" of, and insists upon our believing, is, that that man belongs to the list of "base and corrupt *profligates*." Such is his sincerity, or such his knowledge of human nature.

After an answer thus conclusive, it may be matter of doubt, whether the inanity of the arguments, considered with reference to the state of things the orator saw at that time before him, be worth touching upon.

As in a magic lantern, the scene shifts every moment under his hands. On the occasion in question, to be of any considerable use, the view taken, it was necessary, should embrace the whole field of official emolument—the whole field of office. So, in his hands, but a page or two before, it accordingly did. Now, and without warning, the extent of it is shrunk, perhaps to that of half a dozen offices, perhaps to that of a single office. To a single office confined it must be—to a single office, viz. that of the chief minister, if, of the plan of *hypocrisy* he speaks of, the sort of despotism he speaks of is, in case of success, to be the consequence.

"Unfair advantage to ostentatious ambition over unpretending service,"—"invidious comparisons,"—"destruction of whatever little unity and agreement may be found among ministers:"—all these words, what is it they amount to?—words, and nothing more.

Realized they might be—all these supposed disasters; and still, on the part of the people, the question might be—what then? what is all that to us?—how is it that we should be the worse for it?

1. Says A, I don't want all this money. Says B, I do. Here the thing which A is ambitious of is power, and power only: the thing coveted by B is the same power, with the money into the bargain. On the part of A, where now is the ostentation, where the ambition, more than on the part of B: and, if there were, where would be the specific mischief of it in any tangible shape?

2. *Invidious comparisons!* What is choice without *comparison*? And if invidious meant anything, where is the comparison, which being made for the purpose of choice, is *not* invidious? What is parliamentary debate—what is any debate, but a topic of invidious comparisons?

3. *Destruction of unity and agreement among ministers!* According to circumstances, such destruction is either a misfortune or a blessing. Misfortune to be sure it is, and nothing else, with reference to the ten or a dozen persons spoken of: but with reference to the people and their interests, a "destruction" of this sort is perhaps the most efficient, though it be but a casual, check upon misrule. In case of that system of misconduct, which it is so constantly their interest, and almost constantly in their power to persevere in, it

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affords the only chance — of *punishment* it cannot be said; for of *that* never, for this last half century, has there been any chance, — but of exposure. And in this character, the people, thanks to able instructors, begin to be not altogether insensible to its value.

But a government in the quondam *Venetian* style — a government in which, under the guidance of upstart Machiavelism, titled and confederated imbecility should lord it over king and people, and behind the screen of secresy, waste, oppression, and peculation, should find themselves for ever at their ease; such was the Utopia of Edmund Burke.

To dispose men, if it be possible, to distinguish from solid argument, empty froth, such as this of Edmund Burke's — to distinguish it, and, whenever found, to cast it forth from them with the scorn which is its due, such has been the object; such, if they have had any, has been the use, of these four or five last paragraphs.

SECTION IX.

A PROPHECY, AND BY BURKE—THE KING WILL SWALLOW UP THE WHOLE SUBSTANCE OF THE PEOPLE.

Proposition 17. The King, with the advice and consent of Lords and Commons, will "*infallibly*," one of these days, possess himself of the whole property of the country.

Proof. "For," says he, p. 67, "as wealth is power, so all power will *infallibly* draw wealth to itself by some means or other: and when men are left no way of ascertaining their profits but by their means of obtaining them, those *means*," (continues he, but the argument, it will be seen, required him to say, those "profits") "will be increased to infinity. This is true," continues he, "in all the parts of administration, as well as in the whole."

Observations. Of these doctrines — I mean of the exposure thus made of them — the use is, to show what extravagances imagination is apt to launch into, where, to bring down an *ignis fatuus* for the defence of an indefensible proposition, it mounts without rudder or compass into the region of vague and aërial generalities.

The result, to any such extent as that in which, for the purpose of the moment, the sophist tried, or pretended, to regard it as infallible, is as far, let us hope, from being in any degree a probable one, as at another time he would have been from speaking of it as such.

In the situation of chief minister, or in any other situation, if, by means of an artifice, which, long before it had travelled any considerable length in the tract of success, must have become transparent and visible to the whole people, it depended upon a single individual to possess himself of the whole "*power*," and by means of it, the whole "wealth" of the country, what is it that should have prevented this conquest of the whole *wealth* from having been achieved — achieved ages ago, by those who have had the whole power in their hands?

To the *power*, that exists in the hands of the members of the sovereignty as such — to this power is to be ascribed, as to its cause, the aggregate mass of the several portions of the matter of wealth, which, in their *individual* capacities, are at any given point of time respectively possessed by them. To the power itself there are not any legal limits: there ought not to be any. But to the aggregate mass of wealth actually possessed by them, how excessive soever, limits there always are: limits comparatively narrow: and, at all times, seeing what that *mass* is, we see what those limits are. The King, with the advice and consent of the Lords and Commons, might, if such were his pleasure, might, viz. by act of parliament, take into his hands the whole wealth of the country, and share it between himself and them. Nothing could be more correctly lawful: but, as few things would be more manifestly *inexpedient*, it is what never has been done, and what nobody, sane or insane, is afraid of seeing done.

Not but that the advances made towards this point of consummation have been somewhat nearer than could have been wished: and in this way, as in every other, in the eyes of those who profit by what is *wrong*, "whatever is, is right:" yes, and not only *right*, but *necessary*.

But of the necessity where lies the proof? Here, as elsewhere, it lies in the existence of the *practice*: which, where the thing to be proved is the necessity of that same practice, is, according to the logic of *practical* men, proof abundantly sufficient.

Pressing on the people with so heavy a pressure as this vast portion of their burthen does, on what *ground* is it that it is concluded to be, to wit, in the whole of it, necessary? On this ground, viz. that it is — that in the whole of it, it is — *customary*. And how came it to be customary? Because those whose *interest* it was to make it as great as possible, as great as the people would endure to see it made, found they had *power*, and without preponderant inconvenience, in the shape of danger to themselves, viz. from discontent on the part of the people, to make it what it is.

This *power*—the word power being here taken in the *practical* sense—is all that, to the purpose here in question, has ever been attended to. As to *need*, *demand* in respect of *public utility*—of that utility which is such with reference to the interest of the whole people—*need* or *necessity* in *this* sense, never

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is — never has been — felt to be worth a thought.

As to all those things, in respect to which it is the interest of rulers that the mode of government should be bad, it of course always has been, and of course always will be, as bad as, in their judgment, the people will quietly endure to see it.

This economy bill of Edmund Burke, for example, was it produced by *virtue*, by *public spirit*, on the part of Edmund Burke? No: nor so much as by policy alone — if by policy be meant any *spontaneous* policy on his part, how personal soever and pure of public spirit. Towards the production of this measure, such as it is, *prudence*, meaning apprehension of nearer inconvenience, howsoever assisted by *policy*, meaning hope of more or less distant *power*, with its concomitant sweets, operated, and with no small force, as it should seem, on his mind. The proof is in certain *petitions* which he speaks of.

As to these "*petitions*," they are such as could not have been all of them of his *calling forth*, at least not all of them of his *dictating*, since some of them were troublesome to him. Amongst the things called for by them was, in the instance of several of them, the thing which in this place is more particularly in question, viz. "*the reduction of exorbitant emoluments to efficient offices.*" This, though spoken of by him as an article, "*which seems to be a specific object in several of the petitions,*" is an object with which he expressly declares himself "*not able to intermeddle.*"*

* That the thread of the rhetoric may be under view in its entire state, and without a break, here follows the whole passage:—

"Sir, I think myself bound to give you my reasons as clearly and as fully, for stopping in the course of reformation as for proceeding in it. My limits are the *rules of law*; the *rules of policy*; and the *service of the state*. This is the reason why I am not able to intermeddle with another article, *which seems to be a specific object in several of the petitions*; I mean the reduction of exorbitant emoluments to efficient offices. If I knew of any real efficient office which did possess exorbitant emoluments" — continues he; and then comes the profession of the hypothetical and hypocritical wish to reduce them, as above.

"*Rules of law*," — "*rules of policy*," — "*service of the state*," — all these quiddities may here be seen held up to view, as so many distinct limits, serving as bars to reformation, let down, on this occasion, for the particular purpose of stopping the reduction of exorbitant emoluments: precious bars composed of rhetorical jargon, void of meaning. "*Rules of law*," — no attempt to bring forward any such rule: nor could any such attempt have been other than an absurd one. "*Rules of law?*" Yes, to a judicatory. But to the legislator, what sort of a *bar* can that be, which is removed or broken through of course, at every step he takes. — "*Rules of policy*," and "*the service of the state*," — the same idea; as, in a strolling company, the same performer brought on upon the stage twice over, in two different dresses.

SECTION X.

GRATUITOUS SERVICE, BURKE'S OBJECTIONS TO IT REFUTED. — NECKER. — BURKE'S EAST-INDIA BILL.

The orator continues — "If any individual were to decline his appointments, it might," continues he, p. 67, "give an unfair advantage to ostentatious ambition over unpretending service; might breed invidious comparisons; it might tend to destroy whatever little unity and agreement may be found among ministers. And, after all, when an ambitious man had run down his competitors by a fallacious show of disinterestedness, and fixed himself in power by that means, what security is there that he would not change his course, and claim as an indemnity ten times more than he has given up?"

To these arguments, such as they are, against gratuitous service, my answer, so far as regards the plan above alluded to, is a simple and decisive one. To the plan of adequate salary, coupled with sale so far as applicable, for the account of the public, with the benefit of competition they have not, any of them, any application. For "*ostentation*," under that plan there is no room: the retrenchment, whatever it may amount to, being to all competitors matter of necessity—to none more than another, matter of choice: and if it be in this ostentation that the two other alleged mischiefs, whatever they may be, meant to be denoted by the words "*invidious comparison*," and "*destruction of unity*," have their supposed source, the *ostentation* being out of the case, so will these other supposed mischiefs be likewise.

Here (to speak in his own words) there would be no such "*declining*" — no such "*unfair advantage*" — no such peculiarly "*invidious comparison*" — no such mischievous "*destruction of unity and agreement*" — no such "*running down of competitors*" (for one and the same call would be given to all competitors) — no such "*self-fixation*" of one man alone "*in power*," and by means peculiar to himself.

And after all," continues he, as above, "and after all, when an ambitious man had run down his competitors by a fallacious show of disinterestedness, and fixed himself in power by that means, what security is there that he would not change his course, and claim as an indemnity more than he has given up?"

Gratuitous official service — and, under the name of gratuitous official service, reduction of official emolument being the object still contended against, here we have a quite new argument. Till now, it was in other shapes, though indeed in all manner of shapes other than that of frugality, that, in case of any such reduction, the service was to suffer: now it is in the shape even of frugality itself:

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Whatsoever a man (the sort of man in question) gives up in appearance, in reality (says our sophist) he will take to himself "*ten times more.*"

To the above proposed plan of retrenchment, the objection, such as it is, has not, it must have been seen already, and for the reasons already given, any the slightest application. But even with reference to the then existing state of things, what could be more extravagant?

On the part of the orator, suppose on this occasion any the smallest particle of thought, and at the same time of sincerity, what must have been the opinion entertained by him of the state of government in this country, and how profound at the same time his indifference to it? The state of government such, that on so easy a condition as the giving up a mass of lawful emolument for a time, a man might *make sure* of gaining, in the way of "base profligacy and corruption," *ten times* "as much" in the long run! and this sort of speculation, promising and feasible enough, not only to be *worth* guarding against, but to be *necessary* to be guarded against, and that at such an expense as that of making an all-comprehensive addition to the mass of official emolument! and this too an addition without bounds!

Oh no! (cries the orator) not *make sure*—those were no words of *mine*: "*claim*" was *my* word,—"claim," and nothing more. Oh yes, Mr. Orator, "*claim*" was indeed the *word* you used; but *make sure* was the *idea* it was your object to convey by it: for, sure enough, where public money is the subject, it is only by what a man *gets*, and not by what he *claims*, and *without getting* it, that any mischief can be done.

In writing, no man ever weighed his words in nicer scales; no author ever blotted more, to find, for each occasion, a set of words that shall comprehend two meanings—one for *attack*, another in case of necessity for *retreat* and *self-defence*; such throughout is the study of the rhetorician, whom devotion to a party reduced to that species and degree of servitude, with which sincerity is incompatible. — In this sinister art, no man ever laboured more — no man surely ever made a greater proficiency — no man, one may venture to say, ever made so great a proficiency, as this Edmund Burke.

Here we have a picture (shall we say?) or a plan of Machiavelism, sketched out by his own hand. In itself it is but a loose sketch, for by anything like a complete and correct draught, too much would have been brought to view. But in its exact shape, no small part, and in outline the whole, was already in his own breast. Nor, so far as concerned his own portrait, was it from fancy, but from the looking-glass, that he drew.

The treasury bench — the castle of misrule — stood before him. Sham-economy, an instrument of "Young Ambition," the ladder by which it was to be scaled. Already the ladder was in his hand. A bill for "*independence*" and so forth — and for "*economical reformation*" and so forth — was the name — the wordy name — he had found for it.

At the end of a long contest, the ladder performed its service. But when the fortress was in his hands, a buttress was deemed necessary to enable him to maintain his ground. The buttress fell, and he in it, and along with it; the buttress fell, and great was the fall thereof.

And what was this buttress? Few readers can be at a loss for it.

Four years after, when under the pressure of the mass of corruption, in the hands of the secret advisers of the crown, they betook themselves for relief, he and his party, not to the legitimate influence of the people, as it would have been manifested in an equalized representation, accompanied with the exclusion of dependent votes, but *to a counter-mass* of corruption, to be drawn from the East Indies — it was to the "*fallacious show of disinterestedness*" made by this his *Economy Bill*, already carried and turned into an act, that he trusted for that blind support, which he had looked for at the hands of a supposed blinded people. The result is known to everybody.

As to the picture we here see him drawing, it was, at the time of his thus drawing it, half history, half prophecy: the prophetic part left unfinished, as everything in the shape of prophecy must necessarily be.

The picture dramatized, the characters and other objects in it might stand as follows:—

1. "*Ambitious man*," Edmund Burke.

2. "*Fallacious show of disinterestedness:*" the show made by this *economy bill* of his, with the inconsiderable retrenchments (£60,000 a-year, or some such matter) effected by it.

3. "*Competitors run down*" by means of it (in addition to the force derived from other sources, such as the unpopularity and ill success of the American war, together with the exertions of arbitrary vengeance in the case of Wilkes, &c.) Lord North and his ministry then in power, with the secret advisers of the crown for their support.

4. Instrument attempted to be made *for the* "*fixing himself in power*," Burke's East India bill: a steadiment, containing in it a sort of pump, contrived for drawing from the East Indies the matter of *wealth*, to be applied in the character of matter of *corruption*, by hands of his own choice, to the purpose of engaging a sufficient number of workmen for the fixing him and his party as above, to wit, with such a force of resistance as it should not be in the power of the secret advisers of

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the crown, with all the assistance they could get from the people, to overcome.

As to the particular "*course*," which, for the purpose of reaping the fruits of his conquest, had this machinery of his succeeded, it might have happened to him to take, and with the word *indemnity* in his mouth, the quantity of public money he might *have claimed*, — so it is, that his grand instrument of steadiment and "*fixation*" having failed, all these, together with so many other *quondam* future contingencies, remain in darkness inscrutable. But, supposing the indemnity no more than "*ten times*" the amount of the sacrifice, still would it have fallen short, as anybody may see, of the ground prepared for it by this his speech.

Some years after, viz. about the year 1790, a decent quantity of public money, even though not in office, he did contrive to get: but forasmuch as for this donation there was a pretence made out of a pamphlet, with the help of which the embers of war between Britain and France were blown into a flame, and, for security against anarchy, the good people of Great Britain driven, as far as by his pious endeavours they could be driven, into the arms of despotism, so it was, that the bread of *sinecure* — the sacred *shew-bread*, destined and appropriated to the chief priests of the temple of corruption — was not, any part of it, profaned and diverted to this use: reward in the ordinary shape of *pension* being regarded as applicable to, and sufficient for, this ordinary service.*

SECTION XI.

BURKE'S OBJECTION TO THE APPLICATION OF THE PRINCIPLE OF COMPETITION TO THIS PURPOSE — ITS FRIVOLOUSNESS.

After denying that the great efficient offices are overpaid, "The service of the public," continues he, "is a thing which cannot be put to auction, and struck down to those who will agree to execute it the cheapest."

Cannot! Why *cannot* it? Upon the face of it, the proposition bears not so much as the colour of reason; nor in the sequel is either substance or colour so much as attempted to be found for it. Of *possibility*, what is the sort of evidence that in this case he would require? Would *fact* have been regarded as admissible? "The service of the public *is* a thing which," a year afterwards, after the orator had been in, and out again, Pitt the Second did "*put up to auction*" — "*did strike down to those who would agree to execute it the cheapest*:" and this to such an extent, that, in comparison of the saving thereby effected, whether money or improbity be the article considered, the utmost saving so much as projected by this our sham-reformer, shrinks into insignificance.†

This, it is true, the pseudo-reformer had not as yet witnessed. But there was nothing in it that was not in the most perfect degree obvious: what difficulty there was in the business consisted not in the *thinking* of it, but in the *doing* of it.

But what the sophist trusted to was the word *auction*, and the sentiment of ridicule which, if applied to the subject in question, he hoped to find prepared for the reception of it in men's minds. Mention the word *auction*, the image you present is that of a man with a smirk upon his countenance, mounted on the burlesque of a pulpit, with a wooden hammer in his hand, expatiating upon the virtues — sometimes of statues and pictures — sometimes of chairs and tables.

The hyperboles employed by orators of that class, while expatiating on the virtues of the vendible commodities consigned to their disposal, are, as he in common with everybody else must have remarked every now and then, such as, while in some parts of the audience they produce the desired impression, excite in the minds of others the idea of the ridiculous.

But no panegyric that was ever bestowed by any such orator, on the picture or the screen of a marquis or a duke, had more of exaggeration in it than the pictures which this vender of puffs was so expert at drawing, naming them after this or that one of his most noble patrons and originals. His piece of still

* "This rule," continues he, p. 67, "this rule, like every other, may admit its exceptions. When a great man has some one great object in view, to be achieved in a given time, it may be absolutely necessary for him to walk out of all the common roads, and, if his fortune permits it, to hold himself out as a splendid example. I am told," continues he, "that something of this kind is now doing in a country near us. But this is for a short race — the training for a heat or two, and not the proper preparation for the regular stages of a methodical journey. I am speaking of establishments, and not of men."

As to the splendid example he was here alluding to, it was that of *Necker*; and here, as the sequel showed, the orator was completely in the wrong. What he could not make himself believe, or at least could not bear that others should believe, was, that this training of Necker's (meaning the serving in the office of finance minister without salary) could last for more than "*a heat or two*." It lasted, however, during the whole of "*journey*," nor that an "*unmethodical*" one. He did more than serve the public without being paid for it: he trusted the public, that child of his own adoption, with his own money — with the greatest part of his own money: and that public — that "*base and profligate*," though, in a pecuniary sense, not in general *corrupt*, trustee of his, betrayed its trust.

† Viz. in the instances of loans, lotteries, and victualling contracts. — See Mr. Rose's Observations, &c. pp. 26 to 31.

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life, called the Marquis of Rockingham — his Duke of Portland, into the picture of which a Kneller or a Reynolds would have put more thought than nature and art together had been able to force into the original — that original whose closest resemblance to a picture that had thought in it was the property of being vendible — that puppet, whose wires, after playing for a time so easy, ran rusty at last under the hand of Mr. Canning — viewed through the raree-show glass of Edmund Burke, these and so many other "*great characters*" appear no less fit for their "*high situations*" than the counsellors of King *Solomon*, when, with Punch for their interpreter, on the drawing up of the curtain, they are displayed in the act of paying tributes of wisdom to the wise.

Competition. — This word would not, as *auction* so well did, serve the sophist's purpose. To the word *competition* no *smirk* stands associated — no pulpit — no hammer: — *competition* — a power, the virtues of which had already been so well displayed by Adam Smith, not to speak of Sir James Stewart: in *competition* he beheld that security against waste and corruption which would have been mortal to his views.

SECTION XII.

CONCLUDING OBSERVATIONS. — BURKE, WHY THUS EXAMINED.

Erasmus wrote an eulogium on *folly:* but Erasmus was in jest: Edmund Burke wrote an eulogium — he wrote *this* eulogium — on *peculation:* — and Edmund Burke was serious.

In thus exhibiting the orator in one of those fits of extravagance to which he was but too subject—in exhibiting the orator's own figure, according to the monstrous caricature we have seen him drawing of himself, viz. that of a man, in whose estimation nothing but money has any value — a man by whom all breasts that have anything in them that is not sordid, are to be marked out as fit objects of abhorrence, — let me not be accused of wasting time and paper.

It is out of this his book — meaning always such parts of it as are found suitable, that our statesmen of the present day may be seen taking their lessons. It is out of this his garden of sweet flowers, that the still existing finance committee—and without acknowledgment—have culled, as we have seen, a chaplet wherewith to decorate their brows. It is in this his school, that, by another right honourable teacher of economy, those maxims have certainly been found, and to all appearance learnt, which we shall come to presently.

Had the purpose of his argument, or of his life, required it — here, in this very place, instead of declaiming and writing *for* money, and trying to persuade men that nothing but money is of any value, the orator might, and naturally would, have declared *against* money, — shown in the way that so many other declaimers have shown, that it is of no value, that it is even worse than useless, and that, without "*the basest profligacy and corruption,*" no man — no public man at least — can ever get, or try to get, any of it.

In exaggerations, improbity or folly may behold a use on either side; but to common honesty, nothing is here needful but common sense.

Money is a good thing — a very good thing indeed: and, if it were not a good thing, scarce would anything else be; for there are few good things which a man may not get by means of it — get, either in exchange for it, or (what is still better) even without parting with it.

But the misfortune is, that from us the people, for paying orators of the class of Edmund Burke, it is not to be had without our being forced to part with it: and if the orator suffer in case of his not having it — in case of his never having got so much of it as he could have wished, we the people, who, after having had it, find ourselves, for the use and benefit of the orator, forced to part with it, suffer still more.

Thence it is, that if there be anything else, which, the people not feeling themselves forced to part with it, the orator can persuade himself to be satisfied with, so much the better. Upon this plan, everybody is satisfied — orator and people both: whereas, upon the orator's plan, only one of the parties is satisfied, viz. the orator — the orator, who is the agent and spokesman of *the ruling few;* while the other party, viz. we the people, are suffering and grumbling, and as it should seem not altogether without reason; for we are *the many;* and in our number consists our title to regard: a very unpretending title, but not the less a good and sufficient one.

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PAPER VI.—DEFENCE OF ECONOMY

AGAINST

THE RIGHT HONOURABLE GEORGE ROSE.

FIRST PUBLISHED IN 1817.

ADVERTISEMENT.

WHILE committing to the press so free an examination as this will be found to be, of Mr. Rose's declared *principles*, as published by him on the subject of public expenditure, there would, as it strikes me, be something ungenerous at least, if not unjust, in the omission, were I not to make acknowledgment, as, without any communication, direct or indirect, with the right honourable gentleman, I hereby do, of such proofs of due regard for economy as by incidents falling exclusively within my own observation have been furnished by his *practice*. Of the measures alluded to—two in number—both were in a very considerable degree important: one of them, in respect of extent as well as difficulty, pre-eminently so: and, on both occasions, in his instance as well as that of Mr. Pitt, by such tokens, as in the nature of the case could not have left room for doubt in the mind of any person in any situation, it fell in my way to be assured that a real regard for economy, forming a striking contrast with the mixture of waste, corruption, and dark despotism which in one of the two cases has since been exemplified, was an actuating motive: and that with the spontaneously expressed desire of receiving those suggestions, which, had not circumstances above their controul stood in the way, would accordingly have been received, any such design on the parts of either of them, as that of giving, on the particular occasions in question, any such increase as, on one of those occasions, has since been given, to corruptive influence, was plainly incompatible.

As to the tract itself, with the exception of a few inconsiderable verbal alterations, which the nature of the case necessitated, it is exactly in the state in which it was written; which was in the months of April and May 1810.

For Contents, vide suprà, p. 281.

SECTION I.

INTRODUCTION.

HAVING taken my leave of the departed orator, I have now to pay my obeisance to the surviving statesman; who, though in the line of politics not always conjoined with him, will, in the track of principle, be on the ground here in question, found, as there has already been occasion to observe, separated from him by no great distance.

For principles such as on this same ground may serve as a standard for comparison, I must, on this occasion, as on that other, take leave to refer the reader to these closely compressed thoughts, which are about to take their chance for obtaining a small portion of his notice. [*Vide* Advertisement, p. 278.]

For the convenience of such persons whose taste or whose disposable time shrinks from any such mass as would be formed in the union of all *three* papers, I detach in advance these two parts from that which had been intended to precede them. But forasmuch as throughout this *third* part, reference, either express or tacit, is all along unavoidably made to the principles laid down in the postponed part, and enforced by that by which this one has now lately been preceded;* I find myself in this respect reduced to the necessity of supposing, or at least writing as I should do if I supposed the postponed, as well as the already published part, to have already made its experiment upon the reader's patience.

* In the *Pamphleteer*, No. XVII. Jan. 1817.

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In the production of Edmund Burke, the quantity of matter taken for the subject of examination, was that which happened to be contained between the 62d and 68th pages, both inclusive. Within the pages designated by the same numbers, happens to be contained the only part of Mr. Rose's work, to which the like tribute of unremitted attention has on the present occasion been paid.*

A coincidence, rather more material, is — that of the *discrepancy*, not to say the *repugnancy*, which in this instance as in *that*, will, if I do not greatly deceive myself, be seen to have place — by the one architect as by the other, to the same virtue, viz. *economy*, a temple erected in the first part, beaten down in the second.†

SECTION II.

MR. ROSE'S PLEAS IN BAR TO ECONOMY.

Plea 1.—*Vastness of the Expenditure.*

1. THE first of his pleas, thus pleaded in bar to any defalcations that might be proposed to be made from the mass of public burdens, is that which, with that ingenuity which will not pass unobserved, has been made out of the very magnitude of the mass.

"The whole revenue of Great Britain," says the right honourable gentleman, p. 62, "is more than £60,000,000 a-year; the charge on which, of £242,000 for pensions and sinecure employments at home and abroad, is between three farthings and one penny in the pound. By the extinction, therefore, of all sinecures and pensions, a person paying taxes to the amount of £50 a-year, would save about 4s. Such a saving," continues he, "*we*" (who are *we?*) "are far from thinking should be treated as trifling or insignificant; it would ill become *the author* to do so: on the other hand, how infinitely short would this fall of the expectation that has been held out.

"But if," continues he, "from the total sum received from *sinecures, places, and pensions*, deduction were made of such as have been given as rewards for public services, the amount would be very greatly reduced; pensions to foreign ministers in particular, whose appointments are hardly in any instance sufficient for their maintenance."

It is to "*sinecures and pensions*" alone, that this argument has, by the ingenious author, been applied; to the extra pay of overpaid places, not: but, applying as it does to both branches of expenditure, and with equal force, it would be wronging the argument not to give to both of them the full benefit of it.

Now, true it is, that were this argument to be received in the character here proposed for it, it would, it must be confessed, be a very convenient one, and save others in abundance. For every 4s. a-year which you wish to give away without any public use, contrive to spend £50 a-year, for which such a use, or the appearance of such a use, can be found, and your justification is then made.

Meantime, some reasoners there are, to whom the contrary inference would appear the more reasonable one: — unnecessary, or even necessary, the heavier the mass of our burdens is already, the less able are we to bear any addition to it, or even this or that existing part of it.

In my own view of the matter, I must confess the consideration of the magnitude of the mass is a consideration to which, on a question such as the present, there can be no necessity nor any great use in recurring.

Whatsoever it be that, at the expense of the people, is by the trustees of the people given to this or that individual without equivalent, and that an adequate one—I mean, without either receiving or reasonable expectation of receiving on account of the public a preponderate advantage, is so much *waste*, — and if given with eyes open to the misapplication of it, so much *peculation*.

When by *indictment* a man is prosecuted for theft, or by bill in equity for a breach of trust in the way of peculation, that of the pecuniary circumstances of the party to whose prejudice the act of dishonesty has operated, any account should be taken, is never looked upon as necessary, or so much as admissible. And not being so on that individual scale, I see not why it should be so on this all-comprehensive scale.

But if so it were, that I found myself under an obligation of bringing this topic to view, it seems to me, that, in the vastness of the existing burdens, I should be more apt to view an argument for decreasing it, than either for giving increase to it, or so much as keeping it from decrease.

The misfortune is, that without being thus expressed, this consideration has in experience operated, and with too much effect, in

* Observations respecting the Public Expenditure and the Influence of the Crown; by the Right Honourable George Rose — London, 1810.

† As to the *method* pursued in the present instance—whether it was that, by the statesman in question, no such elaborate art, having *here*, as there, been employed in wrapping up peccant matter in splendid language — or in short, howsoever it happened, so it has happened that the course taken on that occasion by the commentator, so far as concerns the prefixing *interpretations* to *text*, has not been pursued here. But, to avoid all design, as well as charge, of misrepresentation the same care that was taken there has been continued here, viz. that of not hazarding in any instance anything in the shape of a *comment*, without laying at the same time before the reader, in the very words, whatever passage served or contributed to form the ground of it.

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disposing the people to acquiesce, without remonstrance, under unnecessary pressure. Turn over the book of history, you will find that the heavier the burdens have been with which the people have been loaded, the greater the facility that has been found for rendering the load still heavier: or, what comes to the same thing, look backward, and you will find that the more considerable the load they had been accustomed to, the greater was the difficulty that was experienced in persuading them to submit, though it were but for a year or two, to any addition to it.

If, as the facility of engaging them to submit to increased burdens increased, the suffering produced by those burdens diminished, this disposition of mind would be as desirable as it is natural: but unfortunately this is not the case. By heaping law taxes upon law taxes, and law fees upon law fees, you may ruin a thousand families one year, two thousand the next year, and so on: and, the greater the number that are thus ruined, the better enabled and the better satisfied will the man of finance and the man of law be to go on receiving more and more: it will be to both of them, as it has been to both of them, and *to both in one, a motion of course;* but it does not appear, or (to speak intelligibly to learned gentlemen) *non constat*, that when the number thus ruined is two thousand, the affliction is to each or any of them lighter than when the number was but one thousand.

For forming a gag to stop complaints in the mouth of the party tormented, as well as a *callus* to case the heart of the tormentor, precedent is indeed a mighty good thing; and the more manifold the precedent, the more effective the gag, as well as the harder the callus: and the latter use is that to which these several pleas against economy, and this first plea in particular, seems more especially destined and adapted. The misfortune is, that by the callus formed round the one heart, the affliction that rends the other is not assuaged.

Oh but, sir (cries somebody,) what is it you are about all this while? and how sadly have you been misrepresenting the right honourable gentleman! Here are you imputing to him this sad purpose, and that immediately after having read and passed over (fie upon you!) a paragraph in which he tells you *himself* the purpose he had in view, and that a very different one.

True it is that I have read that paragraph; but as to the purpose spoken of in it, I feel myself under a sort of embarrassment which I shall proceed to state.

"The opinion already alluded to," says the paragraph, p. 62, "as prevailing *to a certain extent*, that if sinecures and pensions were entirely suppressed, the burdens of the country would be *instantly lightened to a great amount*, and by some entertained that they would in that case be *removed altogether*, renders it *necessary* that a comparison should be made of the before-mentioned total (viz. of sinecures and pensions,) large as it is, with the amount of the taxes raised upon the people."

Now then—what is *expressly* averred here is — that an opinion to the purpose in question is "*prevailing to a certain extent.*"

What seems to be insinuated — I should rather say — what, from the idea of "*necessity*" thus brought to view, some readers might be apt to imagine, is — that the purpose the right honourable gentleman had in view, was only the setting the *people* right in respect of this supposed prevalent error, and not the persuading the imposers of public burdens to consider the enormity of the mass as affording an argument for not diminishing it.

Now then, as to this supposed error: what seems to me is, that it must have been in some vision or some dream, and nowhere else, that any persons, not in the care of a keeper, could have presented themselves to the conception of the right honourable gentleman, as entertaining it. The interest of the debt paid without money — the expense of the army defrayed without money — the expense of the navy defrayed without money, — all this, not to speak of anything more, must have been believed by any person, in whose mind any such opinion should prevail, as that if sinecures and pensions were suppressed, the burdens of this country would be removed altogether.

Another thing that passes my comprehension is, how should it be that, supposing them to have found, "*to a certain extent*," whatever that extent be — that is, to a certain *number*, whatever that number be — a set of people among whom any such opinion was prevalent, how it should be that it should have entered into their conception, otherwise than in dream or vision, as above, that, for the purpose of setting right any such people, and weaning them from their error, there could be either necessity or use in bringing forward any such ingenious and accurate calculation as that which has just been seen and which he was thereupon immediately about to treat us with: as if, supposing the existence of any such swine, such pearls could be of any the smallest use to them!

If to so right honourable a gentleman anything could be attributed that would bear any such appellation as that of *artifice* — (no I will not call it *artifice* — I will call it *astutia* — and then everything will be as it should be) — what, on an occasion such as this, one should be tempted to suppose, is, that the agreement thus brought forward, and put in front of the battle, was the result of a con-

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sultation with some learned, or quondam learned, as well as right honourable or honourable gentlemen, profoundly learned in that superior and purer branch of the law called *equity;* one of the rules of which is, that in the drawing of the initiative instrument called *a bill*, to entitle yourself to ask a question of the defendant, you must, in the first place, impute to him the having told some story or other, no matter how extravagant, which he never told, to serve him in the character of a "*pretence*" for defrauding the orator (your client) of his due; he himself neither having heard of the defendant's ever saying any such thing, nor believing him to have ever said it; which falsehood having thus with all due regularity been come out with, serves by way of licence, as well as introduction, to whatsoever other falsehoods, mixed with whatsoever truths, it may have been deemed convenient to introduce.

SECTION III.

Plea 2. — Need of Provision for Decayed Nobility, &c.

2. The next plea is that which is founded on the alleged necessity of making provision for noble and respectable families fallen into decay.

"The pension list," continues the right honourable advocate, p. 63, "also contains provisions for *noble and respectable families* fallen into decay; this is, however," continues he, "an exertion of *national generosity*, if not of *justice*, which *the most scrupulous economist* will hardly consider as improper. Something," continues he, "must certainly be allowed for mere favour; but when the instances are *clearly improper* (and it is not meant to contend there are no such,) they are at least open to public animadversion, as they are now *regularly laid before parliament*, and printed from time to time, *which certainly affords a considerable, if not an effectual, check against abuse.*"

Thus far the right honourable gentleman. For my own part, I am doomed to fall into sad disgrace with him. The conception entertained by him of any "*the most scrupulous*" sort of person, in the character of an "*economist*," is far outstripped by me. Under what denomination it may be my lot to fall in his black dictionary, I know not; if it were that of Jacobin or Leveller, it would be no surprise to me.

Of the sort of *justice* which can so much as *permit*, not to speak of *commanding*, any such disposal of public money, I have no conception; nor yet of generosity, unless it be of that pernicious and hypocritical sort which gratifies itself at the expense of justice.

My protest is in the first place against the *principle;* as being founded on oppressive extortion, and breach of trust; as affording encouragement to extravagance, and to every vice that is fed by extravagance; as being still unjustifiable, even though there were a certainty of its not having either vice or extravagance for its consequence, any more than for its cause.

My next objection is to the *amount;* as being without limit; as scorning all limit: and being of itself capable of effecting a revolution in the state of *property*, if it did not, in a revolution in the state of *power*, find a preventive remedy.

I. In the first place, as to *principle*.

Now, to a provision of the sort in question, what is it that, according to the right honourable gentleman's law, is to constitute a man's title? It is "*decay;*" — mere decay; — the having *fallen into decay; i. e.* the being at the time in question in a state of indigence. Mark well, that to indigence at that degree, to which the next degree is death, or at least disease, his argument does not look; for indigence in that shape, provision is made already — made, to wit, by the species of tax called the *poor rates:* a tax which, even by the right honourable gentleman himself, on whose feelings public burdens sit thus lightly, has never been spoken of as a light one.

This provision, then, is not the sort and degree of provision he has in view: of the sort and degree of provision which he has in view, what more adequate or unexceptionable description can be given, than that which has been given in and by his own words? For "*noble*" families, then, it must be *noble;* for "*respectable*" families, it must be *respectable*.

Against provision of even the scantiest kind, an objection that by many has been regarded as a peremptory one, is, that it operates as a provision for idleness and extravagance. By myself, any more than by the right honourable gentleman, it has never been regarded in that light; not seeing, that so long as it is confined to what is absolutely necessary to keep a person alive and free from disease, and given on condition of working, where work can be made profitable (and beyond this I undertake not for the defence of it) subsistence is capable of acting to any preponderantly formidable extent in that character: and considering that, without some such provision, multitudes there are, that by infirmity, the result of infamy, or decrepitude, or disease, would without any default of their own be exposed to perish, and would accordingly perish, by lingering disease or famine.

But by any such provision, neither the *generosity* of the right honourable gentleman, nor so much as his *justice*, is to be satisfied: for *noble* families, satisfied it never can be by anything less than a *noble* provision; for re-

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spectable families, by anything less than a *respectable* one.

In the provision already made by law — a provision neither limited, nor, unfortunately for the country, capable of being limited — some have viewed a gulf capable, of itself, of swallowing up one of these days the whole produce of national industry. Of any such disaster I have not, for my own part, any serious apprehension; but, of the *generosity* of the right honourable gentleman, or by whatever other name this article in the catalogue of his virtues be to be called, of this virtue, if once admitted to operate, and in the character of a *principle* set the law to practice, I cannot but regard this catastrophe as an inevitable consequence.

II. For now let us think a little of the *amount*: and to this the right honourable gentleman has not attempted to set any limits. Vain indeed would have been any such attempt; the principle scorns all limits. Taken by itself, nobility, — had *that* been the only source of demand on this score — would not have scorned all limits. Noble families, for example, so many: — in each family, generations reckoning downwards from each peer, to be regarded as still *noble*, so many: — minimum of the pension to each individual in a state of decay, according to the rank occupied by the family in the scale of the peerage, is so much. Here would have been one exercise for the right honourable gentleman's skill in figures.

But neither for the right honourable gentleman's *generosity*, nor for his *justice*, is it enough, that for *noble* families in decay a *noble* provision be thus kept up; for *respectable* families in the same state, there must moreover be a *respectable* one. Here all powers of calculation, even those of the right honourable gentleman, would find themselves at a stand.

For the moment, let me take the liberty of proposing for them an analogous, though a somewhat different exercise.

By the taxes, as they stand at present — (I presume it is out of taxes, and not out of heaven-dropped manna or heaven-dropped quails, that, according to his plan, the *noble* and the *respectable* provision would be to be made) — by the taxes, as they stand at present, a certain number of families are every year pressed down from a state of independence into a state of pauper and parochially-supported indigence. Now then, for every branch of a noble and respectable family, which, by the noble or respectable provision respectively, is kept above indigence — meaning that which, to the noble or respectable family would have been indigence — how many branches that, without being either noble or respectable, or as yet independent, would be pressed down into that which really is indigence? If *thought* be too much to ask for, a *calculation* of this sort from a right honourable hand, in which figures are so plenty and so much at command, might, at any rate, be not undeserving, it is hoped, of a few figures.

Another exercise for the mathematics of the right honourable gentleman. The *respectable* families — let them for the moment be laid out of the question — let the calculation still confine itself to the *noble* ones.

After observations taken of the rate of the increase given to nobility by his still present Majesty, or even of that part of it that was given with the advice of the right honourable gentleman's departed hero, let him, with *Cocker* in his hand, carry on the increase through a portion of future contingent time. Considering that neither Scotland nor Ireland, nor anything that is noble in either kingdom, can on this occasion be left out of the account, let him inform us what are the number of years that will have elapsed antecedently to that point of time at which the amount of the provision made on his plan for *noble decay*, will have outstripped that of the provision at the same time made for ignoble indigence.

"Oh, but you are confounding *classes* — you are confounding *species*. This is the way with you *jacobins* and you *levellers*. You confound every thing. The noble and respectable families are of *one* species: the ignoble and unrespectable families are of *another*. The ignoble and unrespectable families are of the species that *are sent* to *Walcheren*; the noble and respectable families are of the species that *send them* there. The families whose branches are to be preserved from decay, are those whose *feelings* have a right to be consulted: the families that are to be helped on in the road to ruin, are those whose feelings have no such right."

A smile beams on the countenance of the right honourable gentleman. He calls for his *extinct peerage*: he foresees his triumph: he beholds the confusion of the jacobin; when, at the end of the calculation, it has been made as plain as figures can make anything, how many centuries will have elapsed before any such outstripping can have taken place.

Well then; having, by the success of the operation thus performed upon the *noble* families, given vigour to his hand, let him try it upon the *respectable ones*.

What has just been seen, is what the right honourable gentleman has not anywhere said. True; — but it is what (I fear much) from the beginning of this pamphlet to the end of it, is but too much like what he has thought.

"Something," (says the right honourable gentleman, such is his candour) "something must certainly be allowed for mere favour." Good sir, you already forget your own argument: it is all mere favour, or it is none.

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"Decay," not service; "decay," not merit in any shape, real or imagined, was your title: decay, by what cause soever produced, as well as in whatsoever quantity; produced by eating and drinking, — produced by carrying about seraglios in foreign missions, — produced by horse-racing, — produced by dice or E. O.; is decay less decay? Is nobility the less noble? Is respectability (I mean your sort of respectability — the respectability which consists in having or spending money of one's own or other people's) the less respectable?

Talk of justice and injustice! So long as any *one* individual is, whether on the score of *nobility* or of *respectability*, preserved in this way from decay, it is not mere disfavour, it is no better than mere *injustice*, to refuse it to any *other*.

"But where the instances are clearly improper — and it is not meant," continues the right honourable gentleman, "to contend that there are no such, they are at least open to public animadversion." Good sir, once more your candour carries you too far. What *you* do not mean to contend for, I must, even I. Indeed, sir, there are not any such *instances*: your principle admitted, there *cannot* be any.

"*They are at least open to public animadversion.*" Your pardon, sir; indeed they are not. *Individually* they are not: they are not common: to the "public" two things altogether necessary to the purpose are wanting, viz. *information* and time. Mr. Brown has £1200 a-year: two Miss Vandals have £600. Who knows who this Mr. Brown or those Miss Vandals are? At the moment when the necessity of providing for noble or respectable decay in the person or persons of this Mr. Brown or these Miss Vandals, has by some noble or right honourable person been whispered into the royal ear, the whisperer knows: but the next moment nobody knows. Even now there are more of them than the public patience can endure so much as to *count:* and shall we talk of *scrutiny?* More than can be so much as counted even now! and what shall we say when, your principle being in full operation, there are with us in England, as you know when there were in France, enough of them to fill a *red book*, and *that*, like the army list, no small book, of themselves.

No, sir; individually open to public animadversion they are not, even now: much less at the time in question would they be. But in the lump, in the principle on which they are proposed to be multiplied, and that to infinity, they are "*open to animadversion:*" and on this consideration it is that the presumption, betrayed by the present weak and inadequate attempt at "animadversion," has found its cause.

On the *wing*, who can think to catch, who can so much as follow, all such wasps? But in the *egg*, if the people have but spirit enough, they may be crushed.

"Something," says the candour of the right honourable gentleman, "must be allowed for mere *favour*." Yes: and something must also be allowed for an affection of an opposite nature. This candour of his shall not go unrequited: it shall be paid for in the same coin. If *profusion* be, as it appears to be, all that is meant by "the abuse," a check that abuse "certainly" has; — and that check but *too* "*certainly*" is "*considerable*," though unhappily it is far from being "*an effectual*" one. Of itself, *profusion*, were that the whole of the disorder, would have no check: but, complicated as it is with another disorder, *corruption*, in that other disorder, odd as the case may seem at the first mention of it, it does find a sort of a check: the *diarrhœa* finds in the *septic* diathesis a sort of astringent.

The paradox will disappear immediately. When it happened that the right honourable gentleman, by whom the case of the *sprig* of *decayed nobility* or *respectability* had been submitted to *royal* "generosity" or *royal* "justice," had been voting on the *improper* side, the instance (could any such hopeless intrusion be supposed on the part of the right honourable gentleman) would be one of the *clearly improper* ones, and the decay would be left to its own natural course. When so it happened that on all occasions the patron had *properly* understood, as in duty, I mean in loyalty, every such patron is bound to understand, what on each occasion is the proper side, the decay would find its *proper* preservative, and the profusion would be left to the operation of that check, with the virtue of which the right honourable gentleman is so nearly satisfied; I mean, that "*certainly considerable, if not effectual check*" *against abuse*, which is "afforded" by the pensions forming, when the mischief is past remedy, part and parcel of that almost completely unintelligible, and effectually inscrutable, mass of information or non-information, which is "now" "*so regularly laid before parliament.*"

SECTION IV.

Plea 3.—Need of Subsistence for Official Persons.

3. A THIRD plea is that which is composed of the alleged non-excess, or even insufficiency, of official incomes.

"If we look to official incomes, it will be found they are in most cases," says the right honourable gentleman, "barely equal to the *moderate*, and even the *necessary* expenses of the parties: in many instances, they are *actually* insufficient for these."

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Under the modest guise of a plea *against retrenchment*, we have here a plea *for increase*, and that again an inexhaustible one.

In this plea, *two* points present a more particular call for observation.

One consists in the *indefiniteness*, and thence in the *universality*, of the terms by which the *incomes* in question, and thence the *incomists* are designated. By "*official incomes*," unless some word of limitation be annexed — and no such word is annexed — must be understood *all* official incomes. Less than *all* cannot be meant; for, if anything less be meant, the argument falls short of its undissembled purpose. In most cases, scantiness being asserted, and in many, insufficiency — and that even without a view to the single purpose of a bare subsistence, whether there be any of these incomes that are *more* than "barely equal" to that object, is left to conjecture.

2. The other the word *necessary*, viz. in the application here made of it to a mass of expenses that are to be defrayed at the public charge: an aggregate composed of the several individual expenditures of all these several official persons; and when the present Mr. Rose comes to be in the situation (poverty excepted) of the late Mr. Pitt, let any one calculate, whose skill in calculation is equal to the task, how many are the hundreds of thousands, not to say the millions, a-year, that will depend on the construction of these two words.

To assist us in this calculation, an example, though unfortunately but one, has been afforded us by the right honourable gentleman: and, so far as this carries us, it will appear that, even where, by the frugality of the right honourable gentleman, it is confined to what is "*necessary*," (the inflexibility of this virtue not suffering it to rise to so high a pitch as even to be "*moderate*,") what, in speaking of an official person, is meant by his *expense*, is composed of the official income, whatever it be, which he finds provided for it by law, together with a capital to the amount of between eight and nine years' purchase of it, or reckoning by the year, about 25 per cent. upon it, the person's own patrimony, if he happens to have any, included or not included. But of this under another head.*

SECTION V.

Plea 4.—Need of Money for making Fortunes for Official Persons and their Families.

4. The next plea is that which is founded on the alleged necessity of enabling persons in official situations — all persons in all official situations — to provide for their families at the public expense.

"May we not *then* venture to ask," continues the argument from the passage last quoted — "may we not *then* venture to ask, whether it is *reasonable*, or whether it would be *politic*, that such persons should, after spending a great part of their lives with *industry*, *zeal*, and *fidelity*, in the discharge of trusts and public duties, be left afterwards without reward of any sort, and their families entirely without provision?"

The skill of the right honourable gentleman in *arithmetic* is above, far above, dispute; but, if we may venture to say as much, his *logic* seems to be not altogether upon a par with it.

His *antecedent*, as delivered in the last preceding sentence, is, that the "official income" of the official man is "in many instances insufficient," even for his necessary expenses, meaning his necessary *current* expense; and in this next sentence, the *consequent* or *conclusion* drawn is, that, in plain English, and to speak out, he ought to be enabled to make his fortune always at the public expense; and that to so good a purpose, that after his decease his family may, in respect of current expenses, so long as it continues, find itself — in what plight? in the same plight (we are left to conclude) or thereabouts, as its founder, the official man himself.

As to the being preserved as long as it lasts, — preserved in all its branches from decay, — that any such provision would be short of the mark, though not to what degree short of the mark, is what we are assured of; for if the family of an official person be a respectable family (and if not, what family can be a respectable one?) if this be admitted, "trusts," or no trusts, "public duties," or no public duties; the being kept in a state of perpetual preservation from decay is a right that, in the preceding paragraph, has been claimed for them by the right honourable gentleman's "*generosity*," supported by his *justice*.

The form of the argument is indeed rather of the rhetorical than the logical cast — *May we not venture to ask?* The answer is, good sir, no apology — ask boldly; but ask one thing at a time. First, let us make up the deficiency in respect of current and present expenses, and as the supply we are to provide for these "dischargers of trusts and duties" is to keep pace with their expenditure — with the expenditure of each and every of them (for your "generosity" makes no exception) — "*may we not then venture to ask*," on our parts, for a little breathing time? If so, then, after we have taken breath a little, will be the time for entering on the further employment you have found for us; viz. the making provision for the families of those official, and *therefore* meritorious persons, whose "*industry*, *zeal*, and *fidelity*," as we have not the honour of being acquainted with them, it is impossible for us to dispute.

* Section IX.

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To this industry, zeal, and fidelity, the "reward" which your generosity and justice, your reason and your "policy," have in store for them, is doubtless to be proportioned: for otherwise those virtues of theirs would, as to a part of them more or less considerable, be left without reward—(virtue left without its reward!)—and as, in the estimate to be formed of the degree in which these several virtues will, by the several official, and therefore meritorious, persons be displayed, your "*policy*," under the guidance of your "generosity," will not find itself under any restraint; the quantity of the reward will be as little in danger of finding any such limits, as would pinch and straiten it.

The "insufficiency" of their respective "official incomes," for the respective "necessary expenses" of these officially industrious, zealous, and "faithful" persons — as such is the title on which the "generosity," "justice," "reasonableness," and "policy" of the right honourable gentleman rest their right to have their "necessary expenses" defrayed for them, and at the same time their fortunes made for them; and as no other man can be so good a judge of what is necessary for a man as the man himself is—there is a sort of comfort in the reflection, how small the danger is, that, upon the principles and plans of the right honourable gentleman, virtue, in any such shape at least as that of "industry, zeal, and fidelity," (meaning always official ditto) will be left without its reward. Having got your official situation, you spend in it so much a-year as you find necessary. Having so done, thus and *then* is it that you have entitled yourself to the benefit of the right honourable gentleman's conclusion—his logical conclusion, embellished and put into the dress of a rhetorical *erotesis*—that you are entitled to receive out of the taxes as much more as will secure to your "family" that "provision" which, in virtue of your "*industry, zeal*, and *fidelity*," speaking without partiality, or with no other "*partiality*" than that which, according to the head-master* in the school of official economy, is a kind of justice, it appears to you to deserve.

After so exemplary a pattern of diffidence as has been set by a right honourable gentleman, whose grounds for confidence are so manifest and so unquestionable, a plain man, who feels no such grounds, nor any grounds, for any such pleasurable sensation, can scarce muster up enough of it to put a question of any kind, for fear of being thought encroaching: but, if any one would save me harmless from that charge, I would venture to ask whether it may not have been by a too unqualified adherence to these principles, a too rigid adherence to these precepts, of the two great masters, and without taking the benefit of those precautionary instructions, which the prudence or even the example of one of them might, if sufficiently studied, have furnished them with, that their right honourable friend Mr. Steele, and the honourable Mr. Villiers, and the till the other day honourable Mr. Hunt, and the gallant General Delancy, and the "*industrious, zealous, and faithful*" Mr. John Bowles, with *his* et cæteras, and so many other et cæteras, were led into those little inaccuracies, which time after time have afforded matter of so much, though happily as yet fruitless, triumph to jacobins, levellers, and parliamentary reformers?

It is necessity alone, and not inclination, that, in the performance of the task I have set myself in the school of economy, so frequently imposes upon me so great a misfortune as that of being seen to differ from so great a master as the right honourable gentleman; and accordingly, wherever I am fortunate enough to be able to descry between us anything like a point of coincidence, it is with proportionable eagerness that I lay hold of it, and endeavour to make the most of it.

His plan is—that "official persons," among whom, for the purpose in question, he includes (I presume) persons proposed or proposing themselves for official situations, should determine for themselves what mass of emolument is sufficient for their own expenses, and what for the expenses of their respective families, in present and in future. Now, thus far, this is exactly my plan. Thus far, then, we are agreed; but now comes the unfortunate difference.

My plan (it will be seen) is, that having formed his own calculations, each candidate, in taking his determination, should take it once for all: and moreover, that, as in the case of *stores*, in which instance, instead of skilful labour itself, the produce of skilful labour has, with such well-grounded approbation on the part of the right honourable gentleman, been, ever since the time he speaks of,† regularly furnished for the public service, there should be a "*competition*," whereupon that one of them, whose judgment concerning what is sufficient for *him and his*, is most favourable to the public interest, should (unless for, and to the extent of, special cause to the contrary) be accepted.

Thus far my plan. But, according to the right honourable gentleman's, the accepted candidate, who without any such competition is to be accepted, viz. in consideration of that "*industry, zeal, and fidelity*," which will be so sure of being found in him — this accepted candidate, after his calculation has been formed, and the office, with its emolument, taken possession of, is to have the con-

* Burke, p. 65.

† Pp. 29, 30.

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venience of remaining at liberty to correct by the light of experience (as we shall see* the illustrious chief and pattern of all official men did) any such errors as the calculation shall, from time to time, have been found to contain in it. By this practical test having ascertained what is "*necessary*" for his own present expenses, he will have put himself in a condition to determine, and ought accordingly to stand charged with the "*trust and duty*" of determining, what further provision will be necessary for the "*necessary expenses*" of his family, considered in its several branches, present and future contingent, for and during the continuance of that portion of time called *future time*.

Another unfortunate difference is — that, according to my plan, no exclusion, either express or implied, is put upon such candidates to whom it may happen to have property or income of their own: unable as I am to discover any such office, for the "*trusts and duties*" of which, any such property or income can reasonably be considered as constituting, in any point of view, a ground of disqualification, or to understand, how it can be that a hundred a-year should, in the case of its being a man's own *private* money, go less far towards the defraying the "*necessary expenses*" of *him* and *his*, than if it were so much *public* money, received in the shape of official emolument out of the public purse. What, in regard to *my* official man, my plan accordingly assumes, is — either that he has more or less property or income of his own, or (what in my view comes to much the same thing) what, if anything, remains to the official situation, after the offer made by him, in relation to it, has been accepted, is, in his own judgment, sufficient for his "*expenses*," "*necessary*" and unnecessary, upon every imaginable score.

Of this assumption, that which seems all along to have been proceeded upon by the right honourable gentleman's plan, is exactly the reverse.

True it is, that no *disqualification act*, excluding from official situations all such persons as shall have either property or income, is anywhere proposed by him; — no, nor is so much as any recommendation given by him to the wisdom of the crown in the choice it makes of persons for filling these situations, to act as if a law to some such effect were in force. But, all along, the supposition proceeded and argued upon by him is — that there exists not, in the quarter in question, any such relatively superfluous matter: a state "*entirely without provision*" is the state in which "*afterwards*," to wit, after "*a great part of his life spent*" by the official person "in the discharge of trusts and duties," his "*family*" is spoken of as being "*left*:" and it is upon this supposition that at least the "*policy*" of the right honourable gentleman (not to speak of his humanity) grounds itself in the appeal it makes to that same endowment, which he beholds as fixed in the breasts of those honourable persons for whose use this lesson of economy is designed. Would it be "*reasonable?*" — would it be "*politic?*" — are the questions which on this occasion he asks leave to "*venture to ask*."

* Infra, § IX.

SECTION VI.

Plea 5. — Need of Money for Buying Men off from Professions.

5. A FIFTH plea is composed of the alleged necessity of buying off men from private pursuits: in other words, of the want of "wisdom" there would be in failing to allow to official men — to all official men — in the shape of official emolument, as much money, at the least, as anybody can gain "by trade or manufactures."

"It would hardly," says he, p. 64, "be *wise*, on *reflection*, to establish a *principle*, which would have a *tendency* at least to exclude from the service of their country, men likely to be useful to it. Great numbers of those who engage in trade and manufactures (than whom none are held in greater estimation by the author) or who enter into various professions, frequently acquire very large fortunes" (very true indeed) "and seldom, if they have talents and perseverance, fail to obtain independence. What fairness, justice, or reason, is there then in marking the character of the official man alone with disrespect, and himself as unfit to have reward in any case, beyond an annual stipend for his labour and services, just sufficient for his current expenses, however faithfully and diligently he may have discharged an important trust for a long series of years?" "Surely," concludes he, "it is not unwise or unreasonable that the public should be in a situation to *bid* to a limited extent for talents, in competition with other honourable and lucrative professions, and various branches of trade and manufactures."

Thus far the right honourable author: — as for the obscure commentator, perplexity is once more his fate. The right honourable author speaks of a *principle*: a principle which, such as it is, he disapproves of. But what this principle is, the obscure commentator can no otherwise take his chance for declaring aright, than by a very random guess.

The omitting, in the instance of an official person, to make for his family a provision, such as *he* (the official person) or the right honourable author, or somebody else (and who else?) shall pitch upon as being "*necessary*," and, according to the just-described plan of estimation, *sufficient*? An omission

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to this effect, is it the thing to which, by the style and title of a "*principle*," the right honourable gentleman, "*on reflection*," means to attach the *censure* (for gentle and considerate as it is, it is still a *censure*) — attached to it, viz. by saying of it that "it would hardly be wise?" Yes; this must be it; at any rate, it is the nearest approach to it that the perplexed commentator is able to make.

But of this *principle*, which "*it would hardly be wise to establish*," though unfortunately we have no such specific and particular description, as (were it only to save us from wishing to see an unwise principle established) we cannot but wish for, we have at any rate a general description, viz. such a description as is given of it by the designation, its imputed *tendency*;—and that in so many words: —"a principle" (says he) "which would have a *tendency* at least to exclude from the service of their countrymen likely to be useful to it"

Now, in this *principle*, if so it be that the perplexed commentator has succeeded in his humble endeavours to pierce the cloud that covers it — in this principle we have another measure of the quantity of emolument which on this single score, not to speak at present of any other — on this one account, viz. that of money to be employed in making the fortunes of their respective families, the right honourable author, did it depend on him, would, in the situation of minister, annex to office, — annex to *every* office.

Let us distinguish what requires to be distinguished. What, under the last head, we learned, was one of the *purposes* for which the official emolument was necessary;—what, under this head, we receive, is a sort of standard of reference, from which the quantity of that necessary emolument may be estimated, and finally set down in figures. True it is that, on the present occasion, not that same purpose, but a *fresh* purpose, is named and brought to view; *there*, the purpose was, enabling the official man to make his family; *here*, it is — inducing a man, not as yet official, to become such by buying him off from other pursuits; — from all pursuits, how lucrative soever, in any one of which, if not thus bought off, it might have happened to him to engage.

But, if the quantity allowed for this fresh purpose (viz. the *buying-off* purpose) be ample enough (and the necessity of not being niggardly on this score will be no secret) — the consequence is, that by the help of a little economy, such as at the hands of so enlightened a professor of economy it might not be too much to venture to ask for, one and the same mass of money might be made to serve both purposes. The reason is — that, on the occasion of the two purposes, two different *periods* are in question; viz. that of *possession*, and that of *expectancy*. When actually in possession, whatsoever it be that is necessary to a man, for the good purpose (whatever it be) which is in question (making a family, for example, and so forth,) *that* it is that he must have in hand. But, *before* he has taken possession, and till he has taken possession, it is not necessary, how desirable soever on some accounts it might be, that at the public expense he should have anything. So as you do but give him in prospect, and sufficiently secured, as much as, if in possession, would be, by ever so little, more than any man ever got into possession of by means of trade or manufactures — a million, for example — that same million will, when the time comes, be accepted of, upon account at least, as and for the money necessary to make his family. Of this same million, the eventual *possession* being sufficiently secured, the bare expectation will suffice to buy him off from all trades and manufactures in the lump: so that in fact, if when measured according to the standard laid down by this *fifth* plea, the allowance made on the sum mentioned in plea the *fourth* be sufficiently liberal, the advantage mentioned in this same *fifth* plea is so much got for nothing.

Money, it must all this while be carefully kept in mind — *money* is the only sort of matter which, according to the principles of our right honourable author, is to the purpose here in question; viz. to the purpose of providing recruits for the official establishment, capable of officiating in the character of matter of *reward*. Even so substantial a thing as *power* — power of *management* — power of *patronage*,—*titles*,—*honours*, not to speak of any such empty bubble as *reputation*—all this, in the estimation of the right honourable author, is, to the purpose here in question at least, without force or value.

Money, therefore, and in the same quantity as if there were nothing else that had any value, is the matter of which the *reward*, or whatever it be that is to constitute a man's inducement to engage in the service of the country, is to be composed.

But, as is very truly observed by the right honourable gentleman, so it is, that, in virtue of the money, the prospect of which they present to those who engage in them, there are not only "other honourable and lucrative professions," but "various branches of trade and manufactures," that enter into "competition" with the money, which, in the character of official emolument, stands annexed to official service.

Equally true it is, that every instance in which, in case of a man's "engaging in any of those non-official lines of industry, and in particular in any branch of trade or manufactures, it might happen to him to get more money than he could by official service, the

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difference, whatever it may be, has" (to use the words of the right honourable gentleman) "*a tendency at least to exclude from the service of their country, men likely to be useful to it.*" True, on the other hand, it is, that the character in which this "tendency" operates, is not that of a *physical bar:* no, nor so much as that of a *penal statute.* It is, however, in the character of that sort of obstacle, the resisting force of which is in his eyes so powerful, that the whole paragraph, with the whole of the deobstruent force therein contained, is devoted to the sole purpose of removing it; viz. by persuading those on whom it depends, so to order matters, that by this "discharge of trusts and duties," more money may so be got by somebody or anybody, than can be got by anybody in the exercise of any "lucrative profession, trade, or manufacture."

Now then, to get the better of so troublesome a thing as this "*principle* of *exclusion*," and enable the "*service of the country*" to have as good a chance as "*trade and manufactures*" have, for "*engaging men likely to be useful to it*," what is then to be done? Two courses there are, and in the nature of things but two, by which any such effect is capable of being produced. One consists in lessening the quantity of money capable of being gained in the way of trade and manufactures; the other, in increasing the quantity of money capable of being gained in the shape of official emolument in the way of official service.

To the quantity of money capable at present of being gained in trade or manufactures there are no limits. A million or more one hears spoken of as the amount of the money gained in this or that instance, and even from no very considerable beginnings: of half that money, or thereabouts, one hears in numbers of other instances. Fixations of this sort must remain exposed, not only to original uncertainty, but to continual variation. By a select committee, with the right honourable gentleman at the head, this point, however, is one that needs not despair of being settled: settled, if not with mathematical exactness, at any rate with that rough degree of precision which is sufficient for practice.

True it is, all this while, that on behalf of the public — that public which he has thus taken under his protection — the sum which the right honourable gentleman requires for this purpose is but a "*limited*" sum. To enable the public to maintain, on the occasion in question, the proposed "*competition*" with so formidable a host of competitors as the "*other honourable and lucrative professions, and various branches of trade and manufactures,*" all he asks is — that it "should be in a situation to bid to a "*limited*" extent.

But, the *limits* here alluded to — at what point shall they be set? If set at a sum, the effect of which will leave to these rival pursuits so much as a "*tendency* to exclude from the service of their countrymen who are likely to be useful to it," they will "*exclude,*" from the faculty of regulating practice on this head, the right honourable gentleman, with those "wise" principles of his which he is thus supporting against the *unwise* ones he complains of.

For a *maximum*, beginning with the highest situation, shall we, to make sure, say, for example, a couple of millions, to be laid up over and above "*his necessary current expenses,*" by an official person who, with that "industry, zeal, and fidelity," the union of which the right honourable accountant gives him credit for, as a matter of course, shall, in that highest situation, have spent in the "*discharge of trusts and public duties a great part*" — say, for example, five-and-twenty years — of his life?

For our *maximum*, taking, then, these two millions, or even so scanty an allowance as a single million, and setting out from this point, shall we proceed downwards till, after the manner of that other *state lottery*, which is commonly so called, we have got for our lottery a number of prizes equal to the aggregate number of official situations?

This is what, "*on reflection,*" the "*wisdom*" of the right honourable gentleman requires us to do, on pain of seeing "*established*, the principle," against the "exclusive tendency" of which we have been seeing him remonstrate so pathetically: this, in short, is what we *must* do, unless, embracing the only other branch of the alternative, and going to work in the other quarter, we set ourselves to restrict the quantity of money that a man shall be "*in a situation*" to gain by any of the "*various branches of trade and manufactures.*"

In the "*bidding,*" thus proposed by him "*for talents,*" if on his plan the public service is to have any chance of bearing off the prize or prizes, there remains therefore but one other expedient; and that is, the "*limiting,*" and thus eventually lessening, the quantity of the emolument which men shall have it in their power to make in trade or manufactures.

But this is what the right honourable gentleman would never permit himself to endeavour at. For this would be to "*mark with* disrespect the character" — not now indeed "of the official man," but what, in the right honourable gentleman's estimation, would be quite as improper a character thus to mark, viz. that of the *mercantile* man. It would be to stigmatize by this invidious mark "great numbers of those who engage in trade and manufactures;" — persons "than whom none," not even the official man himself, "are by the author," (as the right honourable author is himself pleased to assure them) "held *in higher estimation.*" This, then, is the objec-

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tion to the setting limits to the sum which a man shall be "in a situation to gain by trade or manufactures:" and after an objection thus conclusive, it were lost time to look for minor ones.

SECTION VII.

DIGRESSION CONCERNING THE VALUE OF MONEY.

SUCH, as we have seen, is the course one or other branch of which is, "on reflection," in the sight of the right honourable author, so necessary, that the omitting to pursue it is considered by him as that which would have the effect of "*marking the character of the official man with disrespect;*" — which to do would — as, in the way of interrogation, the right honourable gentleman, with most incontestable propriety, observes — would be to act without "*fairness, justice or reason.*"

Now as to "*disrespect*" for this *protégé* of the right honourable gentleman — disrespect for him I do protest that I feel none. But, as to the allowing to him out of the taxes all that money which the "*generosity*" and "*justice*" and "*reason*" and "*policy*" and "*wisdom*" and "*fairness*" of his right honourable patron lays claim to on his behalf — without knowing exactly what it is, thus much I know, that so expensive a proof of the absence of disrespect is more than I could afford to pay my share of: mine being one of the "many instances in which *income*," even though not "*official*," is insufficient (to borrow the right honourable gentleman's words) "actually insufficient for *these*."

What I am therefore reduced to, is — the plea that my declining to do *that*, to the doing of which my limited means are so far from being sufficient, is not a mark of *disrespect* to anybody; and by this plea, in so far and so long as it can be maintained, as I humbly conceive it may be to the very last, without disrespect to the right honourable gentleman, I am determined to abide.

My notion of him (I mean the "official man") is — that, besides *money*, there are other things that are capable of being objects of his regard: other things that are capable of engaging him to take upon himself the obligations of office, in the words of the right honourable author (of the value of which, when they are to be had, I am too fully sensible to take up with any other) to "spend" even "a great part of his life in the discharge of trusts and public duties:" and in proof of this, regarding *fact* as no bad proof of possibility, I have referred to several most conspicuous, and happily very extensive lines of practice.*

If it be by either of us — if it be by anybody — that this same "official man" is treated with "disrespect," I would venture to appeal to every man, in whose eyes there may be anything besides *money* that has a value, whether it is not, by the right honourable gentleman himself, whose sympathy can so ill brook the imputation, and whose imagination paints to him a set of unreasonable people — a set of people, into whose company, spite of all protestations, I cannot but expect to find myself forced — people who, being sworn enemies to this same officially "industrious, zealous, and faithful" person, exercise themselves in "marking his character with disrespect," in despite of "fairness, reason, and justice," — (p. 65.)

What the right honourable gentleman *insists* upon — and in a manner much stronger than by *direct assertion* — what he insists upon in the way of *assumption*, is — that upon the mind of his official person there is nothing in the world but money that is capable of operating, whether in possession or expectation, with any adequate degree of efficiency, in the character of "*reward*."

Now, in regard to this same sort of person, my notion is quite opposite: quite opposite, and so determinately so, that the supposed contrariety of his disposition to the character given of him by the right honourable gentleman, is all that that plan of mine, which has so often been alluded to, has to ground itself upon.

"Money, money — nothing else, sir, is of any value in your eyes . . . ."

"Many things there are, sir, besides money, that have their value in your eyes . . . ."

The first is the language in which this respectable person is addressed by the right honourable gentleman, his declared patron. The other is the language in which he is addressed by the *obscure* man, his supposed enemy.

In which of these two modes of address is there most of *respect* — most of *disrespect?* — Gentle reader, judge between us.

For my part, the former mode of address is one that I could not prevail upon myself to use to any man; no, not even to the right honourable gentleman himself: not even his own licence, clear as it is — not even his own express command would prevail upon me; neither *to* him, nor *of* him, could I prevail upon myself ever to say any such thing: for I do not — no, *that* I don't — I would say it to his face — believe it to be true. I beg pardon for the seeming contradiction that I put upon what he says: I mean not anything of disrespect to him in this shape, any more than in the other. I mean not that, should he absolutely insist upon giving any such account of himself, he would, *at the moment*, be saying *that* of which he would be conscious of its not

* Part I. (*Vide* Advertisement to Defence against Burke, p. 278.)

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being true. All I mean is, that if such be his opinion of himself, he does not do himself justice: that, for want of leisure, engrossed as his attention has been by the "discharge of trusts and public duties," he has not looked closely enough into a subject — a human subject — which, if he were to become a little better acquainted with it than he appears as yet to be, might afford him more cause of satisfaction than he seems to be aware of.

Yes, on this ground, defend him I will, though it be against himself; and, fierce as his attack upon himself is, it is not pushed with so much skill, but that I will make him parry it.

For this purpose, I do insist upon it — I will take no denial — that he shall look once more at the last of his own pages but one. After reading, marking, and learning there, that "the most degrading corruption of a statesman, or his friends, is indeed by the influence of money," he will find it written — and that immediately after — that "public men may be corrupted by *the love of power*, as well as by lust of gain." Now then, if by this same love of power men may be "*corrupted*," by this same love of power (I say) they may be *operated upon;* and if operated upon to a *bad* purpose, so may they, and (let us hope) still more easily and effectively, to a *good* one: for when operated upon to a bad purpose, they must be strange men indeed, if they do not find themselves operated upon, with how little force and effect soever, by some principle or other, in a *counter-direction:* in a counter-direction by some principle or other, call it *fear of disrepute*, call it *conscience*, call it what you please*—which they would find acting, not in *opposition* to, but in *concert* with, the love of power, in any case, in which the purpose, towards which it operated upon them, and towards which it tended to direct their exertions, were a *good* one.

And is it really any opinion of the right honourable gentleman's, that to the love of power it is impossible to act upon the mind of man in any direction but a *sinister* one?— impossible to act upon it with effect in any other way than by corrupting it? No; *that* it is not: for if it were, he would shake off from his hands whatsoever, in the shape of power, he felt sticking on them; he would shake it off as he would a viper. Adieu all treasurerships! adieu even all *clerkships!* for to the *clerkship*, even of *parliament*, though no such troublesome appendage as that of *obligation* has ever been felt cleaving to it and incumbering it, yet (not to speak of *money*— *that* not being here in question) *power* enough, and in a variety of shapes, might be found thereunto appertaining, if a gentleman happened to be in a humour to make use of it.

Thus it is that, in and by every line, I am labouring and toiling to prove, and if possible persuade gentlemen to be of opinion, that the sun shines at noonday. But why? Only because, in and by the argument of the right honourable gentleman, the contrary fact is assumed.

SECTION VIII.

Plea 6. — Need of Money as a Stimulus to Official Exertion.

A SIXTH plea, if I understand it right, consists in the alleged need of money for the purpose of serving in the case of official men in the character of a stimulus: to be applied, viz. to men of hereditary wealth and independence, to spur them on to the acquisition of talent; or else to be applied somewhere else, in order to enable us to do without them and their talents, by having better men in their stead.

Of this plea, the account I am thus giving is, I must confess, besides its not being quite so clear as I could wish, a little longwinded; but it is the best I am able to give. Meantime the reader will see whether he can make anything better of it.

"It has always been justly held,"* says the right honourable gentleman, "in a free country, and particularly in this, to be one of its greatest privileges, that the chief aristocracy, as far as relates to the management of its public concerns, *should be* an aristocracy of *talent* and of *virtue*, as well as of *rank* and of *property;* which principle would be *destroyed, if remuneration for public services should be withheld;* and the community would be deprived of all its advantages. Not only the great offices of state, but some others of most efficiency" (secretaryships to the treasury, perhaps, for instance) "*must then be*" (meaning probably, *would in that case necessarily be*) "confined to men of hereditary wealth and independence; and, with all the *proper* respect which *should be* entertained for such men, it must be allowed that, for the acquisition and improvement of talents necessary for the higher offices, the passing occasionally through the inferior situations, and that *principle of activity* which animates men in the attainment, so much more than in the mere possession, of power and station, are much more favourable than the *honours* claimable by descent alone."

The exertions made by the right honourable gentleman, in the endeavours he uses to prevail upon himself, and enable himself, to pay whatever respect it may be "*proper*" to

* In the *Table of the Springs of Action*, lately published by the author, all the principles in question may be found, with explanations. (*Vide* Vol. I. p. 200, *et seq.*)

* Page 65.

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pay to men of a certain description, present an edifying spectacle. It is what he has been trying at, and labouring at throughout the whole course of his paragraph (which, as the reader feels, is not a very short one,) and after all, without having any great success to boast of. Stationed, and for so long a course of time, close to the very door of the cabinet, though not yet on the right side of it — seeing the *Duke of Portland* every day, seeing the *Earl of Liverpool*, seeing the *Lord Viscount Castlereagh*, son and heir-apparent to the Earl of Londonderry, seeing the *Earl of Westmoreland*, seeing the *Earl of Chatham*, seeing *Earl Camden*, seeing the *Lord Mulgrave* — (seeing, in a word, almost everybody that is worth seeing) all of them not only "men of hereditary wealth and independence," but even nobles of the land — among all those great men there is not one, no not one, whom he has found it possible to "hold in any higher estimation" than great numbers of those who engage in trade and manufactures. I mean, antecedently to the exertions betrayed or displayed in this present paragraph; and how small the progress is, which in this same paragraph he has succeeded in making, let this same paragraph itself declare.

His Majesty, for whom also the right honourable gentleman (I will be bound for him) has all along been labouring, and with at least equal energy, to entertain "*all the proper respect which should be entertained for*" him, all these great men, his Majesty, or *those whose estate* (as the lawyers say) *he hath*, were, at one time or other, at the pains of decking out with *titles*, and even some of them with *ribbons:* yet after all, and upon so good a judge of merit as the right honourable gentleman — one moreover who has had such good and such near opportunities of observation — so inconsiderable has been the effect that has been produced at all this expense — that "in the estimation" of the right honourable gentleman, they are still so unfortunate, every one of them, as not to occupy any higher place than is occupied by — alas! alas! — "great numbers of those who engage in trade and manufactures."

Of the difficulties which he had to struggle with, in his endeavours to find or make any higher place for them, the magnitude is betrayed (shall we say?) or manifested, in every line: as is likewise, when all is over, the delicacy with which, to the very last, he avoided giving any direct expression to that conclusion, which having, in an unlucky moment, before the commencement of this paragraph, burst out unawares, had, throughout the whole course of it, been labouring once more to find vent and utterance. Of all these great men, if we may take the word of so good a judge, there is nothing to be made without money; nor, if it were "proper" to speak out, any great matter even with the help of it: especially in comparison of some other great men that he knows of, who, "*for the acquisition and improvement of talents*" necessary for the higher offices — including a consummate skill in the application of the four rules of arithmetic, and without wasting time upon any such speculative and theoretical science as logic, have had the benefit of "passing *occasionally*" (*pour passer le tems*, as the French say) "through the inferior situations."

When the antagonists whom the right honourable gentleman has to contend with, are the offspring of his own genius, they give him little trouble.

In his 62d page, we find him setting to rights a set of men (but whether these were "among his reasonable and candid men" that he had just been meeting with, I cannot take upon me to be certain) — a set of men, however, of some sort or other, according to whose conception, the *whole* amount of what is levied on the people by taxes, goes to pay "sinecures and pensions:" — from which, if true, it would follow that, on so simple a condition as that of suppressing these nuisances — taxes, those still greater nuisances, might be cleared away at any time. But that any such conception is a misconception, and "consequently, although there were no sinecures or pensions, there would still be taxes," he proves immediately beyond all dispute; and his antagonists, let them be ever so "*reasonable*," have not a word more to say for themselves.

This misconception being set to rights in that his 62d page, here again in his 66th page we find him employed in instructing and undeceiving another set of men, or perhaps the same set in another dress, who are for "*withholding remuneration*" (meaning nothing less than *all* remuneration, howsoever ashamed they may be to say so) "for public services."

A strange set of men they are, whoever they are: — and what is to be done with them? The course he takes with them (and if he does not convince them, he at least reduces them to silence) is, the setting them to think of a "principle," which he knows of, and which, if such remunerations were withheld, "*would*," he says, "be destroyed: and, the principle once destroyed," "the community" (he concludes with an irresistible force of reasoning) "*would be deprived of all its advantages.*"

Now, if so it be that he really knows of any such men, it is pity but he had told us where some of them are to be seen: for as a raree-show they would be worth looking at. I, for my part, jacobin as I suppose I am — I, for my part, am not one of them. And this too I am happily enabled to prove: having, for a particular purpose, proposed some good round sums to be disposed of in this way; and *that* according to another plan, in my opinion of which, every day I live confirms me.

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Of the only sort of thing which in his account, — at least while this paragraph lasts, — is of any value, viz. *money*, my plan (I speak now of that which relates to the present subject) goes somewhat further than any other which it has happened to me to see, in reducing the quantity to be administered at the public expense: and yet not even in this shape do I propose to withhold it, except in so far as the public service would be performed, not only *cheaper* but *better* without it: and, be the right honourable gentleman's "*principle*" what it may, I disclaim altogether any such destructive thought, as that of "*destroying*" it.

All this while, a difficulty which has been perplexing me is — that of comprehending what sort of an aristocracy this new sort is, the discovery of which has been made by the right honourable gentleman, and to which, exercising the right which is acknowledged to belong to all discoverers, he has given the name of "*an aristocracy of talent and of virtue.*" Not that by any such description, if taken by itself, any great difficulty would have been produced, but that it is by the sort of relation, which is represented as subsisting between this sort of aristocracy and the sort of thing called *money*, that my perplexity is occasioned.

So far as money is concerned, "*virtue*," according to what we have been used, most of us, to hear and read of at school, and at college, such of us as have been to college, consists, though not perhaps in doing altogether without money, at any rate in taking care not to set too high a value on it. But, *with* all its virtue, or rather *in virtue* of its very virtue, the aristocracy, which the right honourable gentleman has in view, is a sort of aristocracy, of which the characteristic is, that they will not (the members of it) do a stitch without money: and in their eyes, "remuneration" in any other shape is no remuneration at all. Why? Because in their eyes, to this purpose at least, nothing whatever but money is of any value.

We have seen who they are that must have been sitting for the right honourable gentleman's kit-cat club — his "*aristocracy of rank and of property:*" where now shall we find the originals of his "aristocracy of talent and of virtue?"

Consulting the works of Dr. Beatson and Mr. Luffman, the only channels, the periodical ones excepted, through which, in my humble situation, a man can form any conception concerning any such "*great characters*," I can find no others but Mr. Percival, Lord Eldon, Mr. Canning, Sir David Dundas, and a gentleman (right honourable, I presume) who, in Mr. Luffman's Table of Great Characters, occupies at present his 15th column, by the description of "Mr. G. Rose."

Meantime *money* — meaning *public* money — being, in the right honourable gentleman's system of ætiology, the *causa sine quâ non*, not only of "*virtue*," but of that "*talent*" which is found in company with virtue, and being on that score necessary to the constitution of that *one* of the *two* branches of his aristocracy, if it has two, or of the *whole* of it, if it is all in *one*, — what I would submit to him is — whether the task which, in entering upon this work, he appears to have set himself, will have been perfectly gone through with, till he has found means for securing to this *talent-and-virtue* branch of his "*aristocracy*," a larger portion of his one thing needful than appears to have as yet fallen to its lot.

Running over, in this view, such parcels of the matter of remuneration as exceed each of them the amount of £10,000 a-year (the only part of the *sinecure list* a man can find time for looking over and speaking to in this view,) I find them all, or almost all of them, in possession of the "*rank-and-property*" branch: while the "*talent-and-virtue*" branch, starved and hide-bound, has found itself reduced to take up with the other's leavings.

SECTION IX.

Plea 7. — Need of Money for the Support of Official Dignity.

A SEVENTH plea, and the last I have been able to find, consists in the alleged need of money for a purpose that seems to be the same with one which in other vocabularies is meant by the words "*support of dignity:*"* in the words of the right honourable gentleman (for, on pain of misrepresentation, the very words must be taken where words are everything,) "*preservation of a certain appearance.*"

"It is true," continues he, "that magnanimity and genuine patriotic ambition will look for a nobler reward for their services than the emoluments of office; but in the present state of society, *a certain appearance* is essential to be *preserved* by persons in *certain stations*, which cannot be maintained without a liberal provision."

From this paragraph, one piece of good news which we learn, or should learnat least, if it could be depended upon, is — that the time is now come when "*magnanimity and genuine patriotic ambition will look for a nobler reward for their services than the emoluments of office.*" So late as the moment when the last hand was put to the right honourable author's last preceding paragraph, this moment of magnanimity was not yet arrived: down to that moment, had "*remuneration*" (meaning, as

* Finance Committee, 1797-8; — do. 1807-8.

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afterwards explained, in the shape of *emolument)* been withheld, "*principle*," of some kind or other, would have been destroyed — and so forth.

Fortunate is this change for the country, and in particular, not a little so for the somewhat deficient plan here, by an unofficial hand, ventured to be proposed.* Here then we have it; — and from such high and competent authority, — that besides emolument, there is a something which, in the character of "*reward for their services*," "*magnanimity and genuine patriotic ambition*" "*will look for*:" and (what is better still) this unspecified something is capable of being received, not only in the character of a *reward*, but in the character of a reward of "*a nobler*" sort than emolument — that *sine quâ non*, without which, till this paragraph of the right honourable gentleman's was concluded, or at least begun upon, nothing was to be done.

Having this, I have all I want, and (as will be seen, and as I hope has even been seen already) even more than I mean, or have any need, to use.

Unfortunately for me, no sooner has the right honourable gentleman's wisdom and candour and discernment obtained from him, and for my use, this concession, — than some others of his virtues, I know not exactly which, join hands and take it back again: and, though no otherwise than by *implication*, yet — so necessary to his argument is this implication — that, if he had taken it back in *direct* words, he could not have done more than he has done, if so much, towards depriving me of the benefit of it.

"But," continues he — and now comes the retractation — "a *certain* appearance is essential to be preserved by persons in *certain* stations, which" (meaning probably *which appearance)* "cannot be maintained without a liberal provision."

"In *certain* stations, a certain appearance:" — nothing can be more delicate, — nothing at the same time more commodiously *uncertain*, — than this double *certainty*. Meantime, if, in the meaning of the whole paragraph there be anything certain, it appears to me to be this: — viz. that on behalf of "*the magnanimity and genuine patriotic ambition*" which the right honourable gentleman has taken under his protection, what he claims is — that, in the account *debtor* and *creditor*, as between service and reward, this reward, which, not being emolument, is *nobler* than emolument (meaning, by *nobler*, if anything at all be meant by it, that which, in *their* estimate at least, is *worth more)* is to be set down as *worth nothing:* and accordingly, that the quantity of the matter of reward, which each official person is to have in *the less noble*, but *more substantial* and tangible shape, is to be exactly the same as if there were no other reward, either in their hand, or within their view.

To my plan, however, with its weak means of support, so necessary is the concession thus plainly, though but for the moment, made by the right honourable gentleman, that, with my good will, he shall never have it back again. *Power*, then, has its value: *reputation* has its value: and this, for the moment at least, has been admitted by Mr. Rose. By Mr. Rose's evidence — by the weight of Mr. Rose's authority — I have proved it. And now is my time for triumphing. For though neither he, nor any other right honourable gentleman, ever took his seat in any moderately full *House of Commons*, nor ever attended a *quarter-sessions*, without seeing before him gentlemen in numbers, whose conduct afforded a still more conclusive evidence of the same fact, than any verbal testimony they could have given, even though it were in black and white, — *(magistrates*, by the labour they bestow without emolument in the execution of their office — *members*, by the expense which, lawfully or unlawfully they have been at in obtaining their *unemolumented* seats,) — yet such is the weight of *his* authority, and to my humble plan, so strong the support it gives, that, having seized the fortunate moment, and got possession of the evidence, I can do no less than make the most of it.

Now, then (say I,) whatever it be that these valuable things are worth, so much, in the account as between *reward* and *service*, let them be set down for: nor shall even the ingenuity of the right honourable gentleman enable him to object any want of "*fairness*" to my estimate, leaving, as my plan does, to his *protégé* (the proposed official person himself) to make out his own estimate — to fix his own value upon the *non-emolumentary* part of his reward. The more he chooses to have in the *more* "*noble*" shape, the less may he be content to receive in the *less* noble shape: how much he will have of each, rests altogether with himself: and, so long as — with its *bitters* in one hand, and its *sweets* in the other — the office cannot upon my plan be put into his hands without his own consent, what ground for complaint anybody can make for him, is more than I can see.

"*Certain appearance?*" For what *purpose* is it that this *certain appearance*, whatever it be, is so "essential to be preserved?" Is it for *commanding respect?*

In *common* arithmetic — in the sort of arithmetic that would be employed in a plain man's reasoning, be the article what it may — respect or anything else — if there be divers sources or efficient causes of it, — *money*, for instance, and *power* and *reputation*, — to com-

* The plan here, as elsewhere alluded to, is the plan, the publication of which was suspended as above.

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mand the necessary or desirable quantity, whatever be that quantity, the more you have from any one source, the less you need to have from the others, or from any other.

"In the present state of society" (for it is to *that* that the right honourable gentleman calls for our attention,) unfortunately for us vulgar, this arithmetic — this vulgar arithmetic—is not the arithmetic of "*high situation:*" it is not the arithmetic of *St. James's:* it is not the arithmetic of the *House of Lords:* it is not the arithmetic of the *House of Commons:* it is not the arithmetic of the *treasury:* it is not the arithmetic of *office*, — of any office, by which a more *convenient* species of arithmetic can be employed instead of it. In particular, it is not (so we learn, not only from this paragraph, but from the whole tenor of the work of which it makes a part) the arithmetic of the *navy treasurer's office*. According to this *higher* species of arithmetic, the more you have been able to draw from *any one* of these same sources, the more you stand in need of drawing from *every* other. *Power*, not *indigence*, is the measure of demand.

Have you so many hundred thousands of pounds in money? Having this money, you have *power*. Having this *money* with this *power*, it is "*essential*" you should have dignity. Having this dignity, you have that which requires money — more money — for the "*support*" of it. *Money, power, dignity; money, power, dignity*, — such, in this high species of arithmetic, is the everlasting circulate.

Are you in a "*certain station?*" Whatsoever you have *power* to spend, and at the same time *inclination* to spend, this is what the right honourable treasurer is ready to assure you, it is "*indispensably necessary*" you should spend. This is what, if your patience will carry you to the next section of this humble comment, or to the next page of the right honourable text, you will see stated by the right honourable "*discharger of trusts and public duties,*" — and in terms, of which, on any such score as that of want of distinctness or positiveness, no just complaint can be made.

SECTION X.

Plea 8. — *Concerning the late Mr. Pitt's Expenditure — the Impropriety of Economy, how far proved by it.*

IMMEDIATELY upon the back, and, as it should seem, for the more effectual ascertainment of this so unfortunately uncertain, though double, certainty, comes the grand example already above referred to: that one example, — in which we are to look for whatsoever explanation is to be found — for whatever is not inexplicable, in the right honourable author's theory. And this example proves to be the rate, and quantum, and mode of expenditure (private expenditure) observed and here stated by the right honourable gentleman in the instance of the late Mr. Pitt.

"That great statesman," says he,* "who was 'poor amidst a nation's wealth,' whose ambition was patriotism, whose expense and whose economy were only for the public, died in honourable poverty. That circumstance," continues he, "certainly conveys no reproach upon his memory; but when he had leisure to attend to his private concerns, it *distressed* him seriously to reflect that he had debts, without the means of paying them, which he could not have avoided incurring, except from a *parsimony* which would have been called meanness, or by accepting a remuneration from the public, which his enemies would have called rapacity; for he had no expense of any sort that was not *indispensably necessary*, except in *improvements* in his country residence, where his house was hardly equal to the accommodation of the most private gentleman."

That the logic of our right honourable author is not altogether so consummate as his arithmetic, is a suspicion that has been already hazarded: and here perhaps may be seen a confirmation of it.

The proposition undertaken by him to be proved was a pretty comprehensive one; its extent not being less than the entire field of office, considered in respect of the several masses of official emolument comprised in it. This it was that he took for his *subject:* adding for his *predicate*, that these incomes were and are not one of them sufficient, — not one of them, *all things considered*, sufficient to all purposes.†

For proof of this his *universal* proposition, in so far as it is in the nature of *example* to afford proof, he gives us *one* example: *one* example, and but one. The one office, in the instance of which, if insufficiency of emolument be proved, such insufficiency is to be accepted as proof, and that *conclusive*, of equal or proportionable insufficiency in the case of all the rest, is the office of *Prime Minister:* an office, the emolument of which is composed of the emolument attached to *two* offices,

* Page 67.

† "If we look to official incomes, it will be found they are, in most cases, barely equal to the moderate, and even the necessary expenses of the parties: in many instances, they are actually insufficient for *these*. May we not then venture to ask, whether it is reasonable, or whether it would be politic, that such persons should, after spending a great part of their lives with industry, zeal, and fidelity, in the discharge of trusts and public duties, be left afterwards without reward of any sort, and their families entirely without provision?" — Page 64.

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which, when the parliamentary seat of the official person is in the House of Commons, have commonly been, and in the instance of the said Mr. Pitt were, holden in *one* hand.

To complete the right honourable author's argument, there remains for proof but one other proposition, and *that* is — the insufficiency of this compound mass of emolument in the instance of the said Mr. Pitt: and the medium of proof is composed of this fact; viz. that, being so in possession of this mass of annual emolument, he the said Mr. Pitt spent all this money of his own, together with no inconsiderable mass, — amount not mentioned, — of other people's money besides.

Assuming, what nobody will dispute, that Mr. Pitt died in "*poverty*," that which by his right honourable friend is observed and predicated of this poverty is, that it was "*honourable*" to him: which, being admitted or not admitted, the right honourable gentleman's further observation, that it "certainly conveys no reproach to his memory," shall, if it be of any use to him, be admitted or not admitted likewise.

Had this been all, there would certainly at least have been no *dishonour* in the case: a man who has no family, nor any other person or persons, having, on the score of any special relation, any claim upon his bounty, whether it be his choice to expend the whole of his income, or whether it be his choice to lay up this or that part of it, nobody surely can present any just ground for complaint.

But, in addition to that which was his own to spend or save, Mr. Pitt having spent money of other people's in round numbers to the amount of £40,000 more: and this mode of expenditure having in so unhappy a way been rendered notorious, rich and poor together having been forced to contribute to make up to this division of the rich the loss they had been content to run the risk of, something was deemed advisable to be said of it.

In strictness of argument, some readers there may be perhaps, in whose view of the matter it might be sufficient here to observe— that, admitting the fact, unhappily but too notorious, of Mr. Pitt's spending other people's money — admitting this fact in the character of a proof, and that a conclusive one, that the mass of emolument attached to the *two* offices he filled was not sufficient for the *one* official person by whom those two offices were filled, the proof would not extend beyond that one pair of offices; and, the number of offices being unhappily to be counted by thousands, perhaps even by tens of thousands, and this highest of offices, in point of *power*, differing more widely from the general run of offices than perhaps any other that could have been found, the proposition has much the air of remaining in rather worse plight than if nothing in the character of proof had been subjoined to it.

On this footing might the matter perhaps be found to stand, if viewed in a point of view purely and dryly logical. But forasmuch as, notwithstanding, or rather by reason of, its profuseness, the expenditure of this one official person is by his right honourable friend held out as an example; not merely as an example for illustration, but as a pattern for imitation: — for imitation by official persons in general, — for imitation in respect of the quantum of emolument necessary to be allotted out of the taxes, and attached to their respective offices, — an observation or two shall here be hazarded, respecting the conclusiveness of the right honourable author's argument with reference to this collateral and practical part of it.

The *wry neck* of the hero having in this way rendered itself too conspicuous to be concealed by any artifice, what was left to the panegyrist was to make a *beauty* of it. The expense of this repair has surely not been inconsiderable: for here it is not logic only, but morality and policy, that have been made to share in it. Our assent being secured for so unexceptionable a proposition, as that, in the circumstance in question, *poverty is honourable*, the next contrivance is to slip in and get the benefit of our assent extended to one other proposition, viz. (as if there were no difference) that *spending other people's money was honourable;* and thus it is that our approbation is to be engaged for the practice and policy of giving encouragement to such *honourable* conduct, by tokens of parliamentary approbation bestowed at the public expense.

"*Necessary*," with its conjugate "*necessity*," and its near of kin "*essential*," are words of no small convenience to the right honourable gentleman: of such convenience, that *that* thing (it should seem) could not be very easy to be found, which the same, being convenient to official persons in official situations, is not, by and in virtue of such convenience, under and by virtue of the right honourable author's system of ontology, rendered "*necessary*."

Even to a man, who had not quite so much as £8000 a-year of his own to spend,* a mode of expenditure, which, in whatsoever degree *convenient*, would (one should have thought) have presented the least satisfactory claim to

* As first Commissioner of the Treasury, including additional salary, - - - -	£5,032	11	0
As Chancellor of the Exchequer,	1,897	15	1
Net receipt together,	£6,930	6	1

— 15th Report from the Select Committee on Finance, 1797, Appendix C, page 20. Add house-rent, coals, and candles.

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the appellation of *necessary*, is that which consists in spending money of other people's.

Two rocks the reputation of the hero found his course threatened by: two rocks, *meanness* and *rapacity*, one on each side: and the expenditure of other people's money — this was the harbour in which, to avoid this *Scylla* and this *Charybdis*, he took refuge.

Had the expenditure of the hero been confined to the sum which by the competent authorities had been deemed sufficient, such limitation would, from the justice of the right honourable panegyrist himself, notwithstanding his "*just partiality*," have received a gentle reprimand, couched under the term "*parsimony*," and his imagination has found somebody else to call it *meanness;* had he, for those *extraordinary* services which we hear so much of, "*accepted*" as "a remuneration from the public," any of those *sinecures* which, in such unhappy abundance, he saw lavished on men who could not produce so much as the pretence of even the most *ordinary* service; the same industrious and fruitful imagination has found him friends, in the character of "enemies," to "*call it rapacity:*" — to avoid this charge of meanness it is, that he places himself in a state of dependence under traders of various descriptions, — the butcher, the baker, the fishmonger, not to speak of the political intriguer; — to avoid the charge of rapacity it is, that what he obtains from those people, he obtains from them on the pretence of meaning to pay them, knowing that he has not wherewithal, and nobly, constantly, and heroically determined never to "accept" it.

As to distress, while the distress confined itself to those plebeian breasts, this right honourable breast knew no such inmate: but when "some debts pressed so severely upon him as to render it necessary for some of his most private and intimate friends to step in and save him from immediate inconvenience," when, in plain English, he had or was afraid of having executions in his house, then it was that the distress became contagious—then it was that "it distressed him seriously to reflect that he had debts."

When — of a *necessity*, or of anything else, the existence being asserted by a gentleman, and as of his own knowledge, and that so right honourable a gentleman, — an obscure person — who, having no such honour, nor any chance of producing persuasion by any other means than such as his own weak reason may be able to supply — has, after, and notwithstanding, all this form of assertion, the misfortune to feel himself still unsatisfied, it is natural to him to look around him for whatever support may anywhere be to be found: — parliament — the opinion of parliament — should it be found on his side, will *that* stand him in any stead?

Such, as we have seen, is the opinion of Mr. Rose. But parliament — on this same point, what is it that has been the opinion of parliament? Why, the opinion of parliament is — that what Mr. Pitt *had* was sufficient: that more than he had was *not* necessary: — was not of that "*indispensable necessity*" which has been brought on the carpet, by the zeal, assisted by the imagination, of Mr. Rose.

Unfortunately for the right honourable panegyrist—unfortunately for his opinions—unfortunately for his assertions — this point, this very point did, — and on the very occasion he speaks of — come under the cognizance and consideration of parliament. The emolument which is found annexed to these two offices, both of which had been held at the same time by Mr. Pitt, — this emolument, had it been deemed insufficient for the "official man" in question — viz. for the *species* of official man, — would thereupon of course have received an augmentation: in the instance of this official person, the subject would have received those marks of attention, which have so frequently been asked for, and so constantly been given for asking for, in the case of the judges.

Was it, that by the case of this distinguished individual, any demand was presented for any greater mass of emolument than there was likely to be an equally cogent demand for, in the case of any successor of his in the same situation? It seems not easy to conceive a case, in which, all things considered, that demand can ever be so small. True it is, his private fortune was — his station in life considered — barely sufficient for independence. But, he had no wife — no child: — he was, in *deed* as well as in *law*, completely single: and, in the right honourable gentleman's own arithmetic, — which on this head differs not much, it must be confessed, from the vulgar arithmetic, — the demand for money, on the part of the father of a family, is as the number of persons it is composed of.

Over and above his £8000 a-year, augmented, during half his political life, by his sinecure, to £12,000, what is it that he could want money for? — more money (*for that* is *here* the question) than would be wanted by or for any of his successors in power and office? Was it to buy respect and reputation with? Deserved and undeserved together, no man in his place, unless it was his father, ever possessed a larger share of those valuable commodities, than this second *William Pitt*. Had he been in the case of the good-humoured old driveller, who gave so much trouble to Pitt the first, and whom his Majesty's grandfather was so loth to part with or suffer to be elbowed, — in that case there would have been on his part a great deficiency in those essential articles; and if, like *seats*,

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they had been an object of purchase, and public money the proper sort of money to be employed in the purchase, no small quantity of such money would, in that case, have been necessary.

In the way of experiment — in the endeavour to make this purchase, money, though the man's own, and not public money, was, in the duke's case, actually employed, and in memorable and still-remembered abundance: but how completely the experiment failed, is at least as well remembered.

To return to the deficiency of the sort in question, supposed to have been, on the more recent occasion, displayed in the same place. This deficiency, then, — such as it was and still is — parliament, in the case of Mr. Pitt, did not, so long as he lived, think fit to supply: at any rate, left unsupplied. What was done was — the giving a mass of public money — to the amount of £40,000 or thereabouts — among a set of people, names undisclosed, but said to be the deceased minister's *creditors*. Friends remembered their friendships: enemies, now that the enemy was no longer in their way, forgot their enmity: friends and enemies vied in sentimentality — vied in generosity — always at the public expense: and a justification, yea, and more than a justification, was thus made, for the cases of the still *future-contingent* widow of Lord Grenville, and the then *paulo-post* FUTURE widow of Mr. Fox.

Should it here be asked why those trustees of the people chose to saddle their principals with the payment of debts, for which they were not engaged, and the necessity of which they themselves could not take upon themselves to pronounce, — my answer is — that if anything in the shape of an *efficient*, *final*, or *historical* cause will satisfy them, plenty may be seen already: — but if by the word *why*, anything like a *justificative* cause — a *rational* cause — a good and sufficient *reason* — be meant to be asked for, I for my part know of none. At the same time, for the support of the proposition that stands on my side of the argument — it being the negative — viz. that for no such purpose as that of encouraging and inducing ministers to apply to their own use the money of individuals, can it ever be necessary that money raised by taxes should be employed — for the support of any proposition to this effect — so plain does the proposition seem to me, that neither can I see any demand for a support to it in the shape of a *reason*, nor in truth should I know very well how to go about to find one. Not thus clear of all demand for support is the side taken by the right honourable gentleman. By his vote and influence whatsoever on that occasion was done, having been supported and encouraged, on him, in point of consistency, the obligation is incumbent: he stands *concluded*, as the lawyers say, in both ways: on the one hand, not having ventured to propose any correspondent addition, or any addition at all, to be made to the mass of emolument openly and constantly attached to the office, he is *estopped* from saying that any such extra expenditure was necessary; — on the other hand, having, in the case of the individual by whom that expenditure was made, concurred in the vote and act* passed for filling up, at the public charge, the gaps made by that same expenditure in the property of other individuals, he stands convicted by his own confession of concurring in charging the public with a burthen, the necessity of which could not be so much as pretended.

On this occasion, "may we not venture to ask," whether this may not be in the number of those cases, in which gentlemen, honourable gentlemen, under the guidance of right honourable, have, in the words of our right honourable author, been "*misled by mistaken ideas of virtue?*" (p. 77.)

Be this as it may, by this one operation, which is so much to the taste of the right honourable gentleman — (not to speak of so many other right honourable, honourable, and even pious gentlemen) — two distinguishable lessons, may they not be seen given — two distinguishable lessons given to so many different classes of persons, standing in so many different situations? One of these lessons, to wit, to ministers; the other to any such person or persons whose situation might enable them to form plans for fulfilling their duty to themselves, by lending money to ministers.

To ministers an invitation was thus held out, to expend upon themselves, in addition to whatever money is really necessary, as much more as it may happen to them to be disposed so to employ, of that which is not necessary.

Thus far as to the *quantum*: — and as to the *mode*, by borrowing money, or taking up goods of individuals, knowing themselves not to have any adequate means of repayment, and determining not to put themselves into the possession of any such means.

To persons at large, an invitation was at the sametime held out to become *intriguers*; and, by seizing or making opportunities of throwing themselves in the way of a minister, to supply him with money, more than he would be able to repay on demand, and having thus got him in a state of dependence, to obtain from his distress — always at the expense of the public — good gifts in every imaginable shape: — *peerages* — *baronetcies* — *ribbons* — *lucrative offices* — *contracts* — assistance in parliamentary *jobs*, — good things, in a word, of all sorts, for which, no money being paid or parted with, neither the giver nor the re-

* 46 Geo. III. cap. 149, § 15.

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ceiver would run any the slightest risk of being either punished, or in any other way made responsible.

By a *loan*, though, for example, it were but of £5000, if properly timed—and that on both occasions—first as to the time of the administering the supply, and then as to the time of pressing for repayment,—*that*, may it not every now and then be done, which could not have been done by a gift of £10,000? How often have not *seats*, for example, been in this way obtained—and this even without any such imputation as that of the sin, the venial sin, of parliamentary simony?

In virtue of the invitation thus given by the magnanimity and generosity of parliament,—an invitation open at all times to the acceptance of persons to whom it may happen to find themselves in the corresponding situations—who is there that does not see, how snugly the benefit of bribery may be reaped on both sides, and to any amount, without any of the risk?

A banker is made a lord. Why is a banker to be made a lord? What is it that the banker ever did, that he is to be made a lord? A merchant is made a lord. Why is a merchant to be made a lord? What is it that the merchant ever did, that he is to be made a lord?—These are among the questions which are in themselves as natural, as the answers, true or untrue, might be unpleasant to some and dangerous to others.

We have heard, many of us, of the once celebrated *Nabob of Arcot* and his *creditors:* and the mode in which their respective debts were to an as yet unfathomed extent, contracted: those debts, which, in so large a proportion, and to so large an amount, just and unjust together, in name the expiring Company, and in effect the whole body of the people, have paid, or, spite of the best possible discrimination, will have to pay.

By the example set, and lesson held out, by the *virtue* of the right honourable gentleman, and his right honourable and honourable coadjutors, the policy of Arcot, was it not thus sanctioned and imported into Great Britain? "Ministers, plunge your hands as deep as you can into other people's pockets: intriguers, supply profuse and needy ministers with whatever they want, and make the most of them: we will be your sureties; our care it shall be, that you shall not be losers."

Against the opinions of so many great characters—such has been my temerity—over and over again have I laboured to prove, I know not with what success, that *money* is not the only coin in which it may happen to a public man to be willing to take payment of the public for his labour: and that *power* and *reputation*,—though they will not, like shillings and halfpence, go to market for butter and eggs,—yet, like Exchequer bills, within a certain circle, they are not altogether unsusceptible of a certain degree of currency. Of the truth of this proposition, the Mr. Pitt in question affords at least one instance.

It proves indeed something more: for, in so far as purposely forbearing to receive what it is in a man's option to receive, is tantamount to paying,—it proves that, in the instance in question, the value of these commodities was equal to that of a very considerable sum of money: in round numbers, worth £40,000—at any rate, worth more than £39,000.

Not that in the eyes of the hero, money had no value: for it had much too great a value: it possessed a value greater than the estimated value of common honesty and independence.

He loved money, and by much too well: he loved it with the love of *covetousness*. Not that he hoarded it, or put it out to usury. But there are two sorts of covetous men: those who covet it to keep it, and those who covet it to spend it: the class he belonged to was this *coveting-and-spending* class.

Yes:—*that* he did:—Pitt the second did love money: and not his own money merely, but other people's likewise: loving it, he coveted it; and coveting it, he obtained it.

The debt which he contracted was so much money coveted, obtained, and expended, for and in the purchase of such miscellaneous pleasures as happened to be suited to his taste. The sinecure money which he might have had and would not have, was so much money expended in the shape of *insurance money* on account of power: in the purchase of that *respect* and *reputation*, which his prudence represented as necessary to the preservation of so valuable an article against storms and tempests from above. Sinecure money, to any given amount, the hero could have got for himself, with at least as much facility as for his right honourable panegyrist; but the *respect* and the *reputation* were defences, which in that situation could not be put to hazard. Of the battles he had to fight with the sort of *dragons* commonly called *secret advisers*, this bare hint is all that can be given by one who knows nothing of anybody or anything: his right honourable *Achates*, by whom he must (alas! how oft!) have been seen in a tottering and almost sinking attitude,—more particulars could doubtless be given, by a great many, than by a gentleman of his discretion it would.... (unless it were in a posthumous *diary*, for which posterity would be much obliged to him) be "*useful on his sole authority.... to enter into any detail of.*" It was to enable virtue to rise triumphant out of all these trials, that the amount of all this sinecure money was thus *expended*, and without having been *received*.

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SECTION XI.

CONCERNING INFLUENCE.

On the subject of *influence* (page 74,) what the right honourable gentleman *admits*, is — that owing to the greatly increased revenue, and all the other augmented and "accumulated business of the state," some increase has, though "unavoidably, been occasioned in it," viz. by "increase of patronage." At the same time, notwithstanding this increase, yet, in point of practice, the state of things, if we may trust to his conception, is exactly as if there were no such thing at all as influence. How so? Why, for this plain reason, viz. that "the influence created by such means is *infinitely* short of what," viz. "by the measures of economy and regulation to which recourse has been had"— "has been given up."

Thus far the right honourable author. But in the humble conception of his obscure commentator, the question between the two quantities, one of which is, in the hands of the right honourable accountant, multiplied by one of those figures of rhetoric, which, in aid of the figures of arithmetic, are so much at his command — multiplied in a word to "*infinity*" — this question is not, on the present occasion, the proper one. In regard to *influence*, the question which, with leave of the public, the obscure commentator would venture to propose — as and for a more proper one, is — whether, for any existing particle of this influence, any preponderant use can, in compensation for the acknowledged evil consequences of it, be found? and if not, whether there be any, and what, quantity of it left remaining, that could be got rid of? Understand, on each occasion, as being a condition universally and necessarily implied — without prejudice in other respects, — and *that* preponderant prejudice — to the public service.

As to these points, what appears to me, with submission, is — that, without travelling out of this the right honourable gentleman's own work, an instance might be found of a little sprig of influence, which, without any such preponderant prejudice to *Mr. Reeve's tree*, might be pruned off.

This work of his (I mean Mr. Rose's) has for its title — "*Observations respecting the Public Expenditure, and the Influence of the Crown.*"

But unfortunately, as, in due place and time, the candour of the right honourable gentleman himself, in effect, acknowledges, these *observations* of his — and from so experienced an observer — are *all on one side*.

On the subject of expenditure, out of 79 pages, 61 have been expended in showing us what retrenchments have been made, and how great they are. Are they indeed so great? So much the better: but even yet, considering that if we may believe the right honourable gentleman himself (p. 62,) the whole revenue of Great Britain is "*more than* £60,000,000 *a-year*," let the retrenchments have been ever so great, the demand for further retrenchment, wheresoever it can be made, without preponderant prejudice to the public service, seems by no means to be superseded.

Subject to that necessary condition, is there any such further retrenchment practicable? This is exactly what the right honourable gentleman has not merely avoided, but positively refused to tell us.

From first to last, this work of his has, according to the author's own account of it, but one aim; and that is, by showing how great the retrenchments are that have been made already, to stop our mouths, and prevent our calling for any more. Is it then true, that in this way all has been done that ought to be done? Even this, not even in terms ever so general, will he vouchsafe to tell us. "To what extent or in what manner it may be proper to press further retrenchment, the author," says he, p. 62, "has not the remotest intention of offering an opinion: his view has been clearly explained."

Looking for the explanation, the clearness of which is thus insisted on, I find it, if I do not mistake, in his last preceding page but one, viz. in p. 60, in which, speaking of this his work by the name of "the present publication," — "In endeavouring to set right the public opinion on this subject, the performance of an act of justice to *any* administration, is," he says, "but a *small part* of its use; a much *more important* consideration is, its effect in producing that salutary and reasonable *confidence*, which gives the power of exertion to the government, and that concurrence which seconds its exertions among the people."

Thus far the right honourable author. For my own part, if my conception concerning a government's title to confidence be not altogether an erroneous one, this title depends in no inconsiderable degree on its disposition "*to press further retrenchments*:" (p. 62.) I mean of course, in so far as, in the judgment of that government, they are not otherwise than "*proper*" ones. Yet this the right honourable gentleman — a member of this same government, and that in the very next rank to the highest, and receiving (besides sinecure money) no less than £4000 a-year for being so, peremptorily — and, as we have seen, of his own accord, — refuses to do.

He will not do any such thing: and why not? On this point we might be apt to be at a stand at least, if not at a loss, were it not for the lights with which, in another page (p. 74) the right honourable author himself has

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favoured us. His "opinions" on the subject, he there acknowledges, are "*strong ones;*" but strong as they are, or rather because they are so strong, he will not let us know what they are; because "*on his sole authority,*" that is, unless other opinions that in the scale of office stand yet higher than his, concurred with his, "*it would not be useful:*" — there would be *no use* in it. No use in it? what! not on a subject of such vital importance — when, for the declared purpose of "setting right the public opinion on this subject," a right honourable author, who knows all about it, takes up the pen, can it be that there would be no use in speaking what he thinks is right? and as much of it as he has to speak? No use in his speaking impartially? — in speaking on both sides, and on all sides, what he thinks?

But not to go on any further in thus beating the bush, may we not in plain English venture to ask — at the bottom of all his delicacy, can any other interpretation be found than this, viz. that by those, for whose defence and for whose purposes — and, to come to the point at once — under whose *influence* this work of his was written, his speaking as he thinks, and what he thinks right — his speaking out on both sides, would it in his own persuasion have been found not endurable?

If so, here then we have a practical illustration and development of a number of preceding hints. Here we see the character — here we see one effect and use — of that "*aristocracy of talent and virtue*" with which, in the account of remuneration, nothing but money will pass current — nothing but money is of any value — and which constitutes so necessary an addition to the "*aristocracy of rank and property.*"

Here we see what is, and what we are the better for, the fruit of "that principle of activity," (p. 66,) which animates men in the attainment, so much more than in the mere possession of power and station, "and of that amusement, which, for the acquisition and improvement of talents necessary for the higher offices, gentlemen have given themselves, in passing *occasionally* through the inferior situations."

"Of the *unpopularity* and *ridicule* that has so often been attempted to be fixed on the word *confidence*," the right honourable gentleman has, as he is pleased to inform us, according to his own statement (p. 61,) had "*some experience.*" One little item, to whatsoever may have been the stock laid up by him of that instructive article, he may find occasion to make. To that sort of *confidence* which is "*unthinking and blind,*" this "unpopularity and ridicule," he appears to look upon as not altogether "*inapplicable,*" nor consequently the sort of "*attempt*" he speaks of, viz. that of fixing it on the word *confidence*, as altogether incapable of being attended with success."

But can anything be more "*unthinking and blind*" than that confidence which should bestow itself on an official man, howsoever right honourable, who, in treating of a subject confessedly of high national importance, and after furnishing, in favour of one side, whatsoever information his matchless experience, his unquestioned ingenuity, his indefatigable industry, can rake together, — and feeling, on the other side of his mind, "*opinions*" — and those "*strong* ones," nor doubtless unaccompanied with an adequate knowledge of facts—of those facts from which they receive their existence and their strength — should refuse — deliberately, and peremptorily, as well as spontaneously, refuse — to furnish any the least tittle of information from that other side.

Eloquent and zealous in support of profusion, mute when the time should come for pleading in favour of retrenchment, not without compunction let him behold at least one consequence. Destitute of all competent, of all sufficiently qualified, of all officially qualified, advocates — deserted even by him who should have been its solicitor-general, thus it is that the cause of *economy* is left to take its chance for finding here and there an advocate among low people, who have never been regularly called to this high *bar:* interlopers, who, destitute of all prospect of that "remuneration" which is the sole "*principle of activity that animates men in the attainment of power and station*" (p. 66.) destitute of the advantage of "*passing occasionally through even the inferior situations*" (p. 66,) are destitute of all "*talent,*" destitute of all "*virtue,*" — and whose productions, if, for the purpose of the argument, they could for a moment be supposed capable of contributing, on the ground here in question, anything that could be conducive to the public service, would, one and all, be so many effects without a cause.

SECTION XII.

CONCERNING PECUNIARY COMPETITION—AND THE USE MADE OF THE PRINCIPLE.

Before the subject of *influence* is dismissed, a word or two may, perhaps, have its use, for the purpose of endeavouring to submit to the consideration of the right honourable panegyrist, an article of *revenue*, viz. *crown lands*, which neither on his part, nor on the part of his hero, seems to have received quite so much attention as could have been wished.

To the purpose of the present publication, a circumstance that renders this article the more material is — that it may contribute to

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render more and more familiar to the eye of the reader a *principle*, on a due estimation of which the plan hereafter to be proposed depends for everything in it, that either promises to be in its effect eventually useful, or is in its application new.

Economy and *purity*—reduction of expense, and reduction of undue influence — in these may be seen the two distinguishable and distinguished, though intimately connected, objects, to which, speaking of the principle of *competition*, our right honourable author speaks of it as having been meant to be made subservient, and as having accordingly been made subservient, in the hands of Mr. Pitt—(p. 26.)

"Mr. Pitt," he informs us, p. 25, "looking anxiously to reforms, effected many even considerable savings — and at the same time sacrificed an influence as minister, much more dangerous than any possessed by the crown, *because more secret and unobserved;* the extent of it indeed could be known only to himself and to those in his immediate confidence. We shall state," continues he, "the measures in their order, — beginning with loans and lotteries, — proceeding with *private contracts*, and closing this part of the account with the profit derived from the mode irrevocably established respecting *the renewals of crown leases*. In each of which cases, the influence diminished was not only extensive, but was obviously in its nature more objectionable than any that could be acquired by the disposal of *offices;* as the effect of the former was *secret and unobserved*, whereas the latter is apparent and generally known."

Coming to crown lands (p. 34.) "The last head of saving by management," says he, "is under that of the estates of the crown. The act of the 1st of Queen Anne,* continued at the beginning of each succeeding reign, for limiting grants of crown lands to 31 years, put a stop to the actual alienation of the property of the crown; but, in its operation, had the effect of greatly adding to the influence of it, and certainly afforded no protection whatever to its revenues, as will be seen in the note below.† In reigns antecedent to that of Queen Anne, when grants were perpetual, the persons to whom they were made became immediately independent of the crown, and not unfrequently gave very early proofs of that independence: whereas, by the measure adopted on the accession of the Queen, every grantee, or the person representing him, became dependent on the minister for a renewal of his lease, for which applications were generally made at such times, and on such occasions, as were thought to afford the best hope of their being attended to, on terms favourable to his interest.

"Under this system Mr. Pitt, on coming into office, found the whole landed property of the crown, and the income arising from it, in every way, very little exceeding £4000 a-year.

"*He therefore, after long inquiries, and most attentive consideration*, applied a remedy in 1794, when an act was passed,‡ by which it is provided that no lease shall be renewed till within a short period of its expiration, nor till an actual survey shall have been made by two professional men of experience and character, who are required to certify the true value of the premises to the treasury, attested on their oaths. *No abuse can therefore take place*, nor any *undue favour be shown*, under the provisions of this law, *unless surveyors of eminence* in their line shall *deliberately perjure themselves*, or a treasury shall be found bold enough to grant leases, or renew them, at a less value than shall be certified to them, which could not escape immediate detection, as there is a clause in the act, requiring an account to be laid before parliament annually of what leases or grants shall have been made in the year preceding; for what terms or estates; the annual value, as returned on oath by the surveyors; the annual value of the last preceding survey; what rents shall have been reserved, or what fines paid; and upon what other considerations such leases shall have been respectively made.

"More strict provisions to guard against any evasion of the law could *hardly* have been devised."

Thus far our right honourable author: a word or two now from his obscure commentator.

Where, having determined with himself to obtain for public property the best price that is to be had, Mr. Pitt pursues that principle, my humble applause follows him: but when, without sufficient reason, he turns aside from that or any other principle, then my applause stops: applause, whatever in that case perseveres in following him, will be of that sort which comes from copartners and panegyrists.

When government annuities were the commodity to be disposed of, then it was that it was the choice of Mr. Pitt to have the best price: then it was that, choosing to have the best price, he adopted the mode, and the only mode, by which that effect can be produced.

When leasehold interests in crown lands were the commodity to be disposed of, then it was that it was not the choice of Mr. Pitt

* 1 Anne, st. 1, c. 7.

† "In fifteen years, to 1715, the whole income from crown lands, including rents, fines, and grants of all sorts, was £22,624 equal to £1,500 a-year—Journals of H. C., vol. xx. p. 520; and in seven years, to 1746, was £15,600, equal to £2,228 a-year—Journals, vol. xxv. p. 206."

‡ 34 Geo. III. cap. 75.

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to have the best price. Then it was, accordingly, that, for fear of having the best price, care was taken *not* to employ the mode, the only mode, by which any such effect can be produced.

To avoid giving birth to the undesirable effect in question, the expedient employed was (we see) "an actual survey, made by two professional men of experience and character, who are required to certify the true value of the premises to the treasury, attested on their oaths."

"Under the provision of this law," one thing the right honourable gentleman endeavours to persuade us of (p. 35) — is, that "no abuse can take place, nor undue favour be shown." Why not? Because (says he) no such effect can take place "unless surveyors of eminence in their line shall deliberately perjure themselves or" — something else which he mentions shall take place, and which, admitting the improbability of it, I shall not repeat here.

As to *perjury*, the *word* is a *strong word*, and to the purpose of causing the reader to suppose that the security provided by it is a *strong security*, more conducive than any real lover of sincerity can be well pleased to find it. But, from the pen of a veteran in *office*, and in *offices*, and in *such* offices, to whom it cannot be altogether unknown, to how prodigious an extent the people of this country are made deliberately and habitually to perjure themselves — and how fond, under the guidance of priests and lawyers, the legislation and jurisprudence of this same country have been, of causing men, always without any the smallest use, deliberately to perjure themselves* — it is not without pain that a man, who has any real dislike to perjury, can behold this security held up to view in the character of a *real* one.

Cases there are (it is confessed with pleasure) in which this alleged security is an efficient one: as for instance, where testimony to a matter of fact is to be given, *vivâ voce*, in an open judicatory, and under the check of cross-examination: not that even in that case it is to the ceremony that the efficiency would be found ascribable, but to the cross-examination, and the publicity, with or without the eventual punishment. But in the case *here* in question, not one of all those elements of efficiency is to be found. The sort of perjury which the right honourable gentleman endeavours to make us take for a punishable offence, suppose it, for argument's sake, committed — was ever one instance known of a man being prosecuted for it as for perjury? Great would be my surprise to hear of any such case. Would so much as an indictment lie? I have not searched, nor to the present purpose does it seem worth while. Gross indeed must be the case, strong and clear; stronger and clearer than it seems in the nature of the case to afford — the proof by which, upon any such indictment, conviction must be produced.

Few, it is evident, are the sorts of articles — lands, houses, or any other such articles, coming under the head of *crown lands*, being unquestionably not of the number — few, about the value of which it may not happen to "surveyors of eminence, experience, and character" to entertain real differences of opinion; and moreover, and without the smallest imputation on that "*character*," much more without the possibility of suffering as for *perjury*, to agree in assigning such a value, as to a very considerable amount — according to circumstances, say 5, 10, 12, 15, 20, 50 per cent. (in short, one knows not where to stop) greater or less than what in their opinions respectively is the true one.

The real value of the premises is the joint result of some half dozen (suppose) of circumstances on each side: whereupon, on one side (suppose again) this or that little circumstance, somehow or other, fails of being taken into the account. Unless the human understanding were that perfect kind of machine which everybody acknowledges it not to be, who could think of speaking of it as importing so much as a speck upon a man's character, that any such little oversight has taken place? Meantime, the profit by the oversight may amount to thousands of pounds in any number.

Unfortunately for *economy*, still more unfortunately for *uncorruption*, the sort of contract here in question is one of those in which, with a pre-eminent degree of force, interest and opportunity join, in securing to the subject of valuation a false or under-value. What the one party, viz. the proposed lessee wants, is money; what the other party, the "discharger of duties and public trusts," wants, is *influence*. If the valuation be deficient, then, in proportion to the deficiency, both parties have what they want. Under a state of things so favourable to mutual accommodation, let any one, who feels bold enough, undertake to set a limit to the loss liable to be produced to the public by the substitution of this mode of sale, to the only one which is capable of finding out the real value. In a *fancy* article, such as a villa, or a site for a villa, cent. per cent. may be below the difference. Ten per cent. — to put, for argument's sake, a certain amount for an uncertain one — will surely be regarded as a very small allowance.

In this ten per cent., then, may be seen the amount of the *saving*, or the acquisition, call it which you please, which on the occasion in

* See "Swear not at all," &c. by the Author, Vol. V. p. 189, *et seq.*

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question might have been made to the public, and was not made.

Thus much as to *revenue*. Then as to *influence*, "some judgment," as Mr. Rose observes, p. 37, "may be formed by observing, that of the persons holding crown leases when the act was passed, upwards of *eighty were* members of one or the other house of parliament; and it is hardly necessary to add," continues he, "that in the cases of *other lessees*, the parties, who might have the means of doing so, would naturally resort to solicitations of friends for obtaining the minister's favour."

Now, in the picture thus drawn of the state of the case, as it stood at *that* time—drawn by so experienced and expert a hand—so far as concerns *influence*, I, for my own part, till some distinct ground of difference is brought to view, cannot but see a picture equally correct of the state of the case as it stands at this moment; at this moment, viz. after and notwithstanding—not to say by reason of—the reform thus lauded. So far indeed as concerns revenue, I cannot doubt but that a very considerable change—and, so far as it goes, a change for the better, has been made; a change, for the amount of which I take of course the account given of it by Mr. Rose. But, so far as concerns *influence*, what I should not expect to find is, that any change, worth taking into account, had taken place. "*Eighty*," according to the right honourable gentleman, is the number of *members* so circumstanced at that time; *eighty*,—or rather, from that increasing division, which landed property, where it will serve for building, or even for sites of villas, naturally admits of, *more* than eighty—is the number which I should expect to find at present; not to speak of *expectants*, for whom, where the purpose of the argument requires it, the right honourable arguer knows so well how to take credit. For convincing an honourable or right honourable gentleman of the superiority of one ministry over another, ten per cent. upon any given sum will not, it is true, serve so effectually in the character of a persuasion, as thirty per cent.: but wherever the ten per cent. suffices, the abolished twenty per cent. would have been but surplusage, since thirty per cent. could do no more. The case of the villa contiguous to Chelsea Hospital—a case which, though it happened so long ago as the last session, is not yet, it is hoped, altogether out of recollection—may serve, and as well as half a hundred, for clearing and fixing our ideas on this subject. From that case may be formed some judgment, whether the impossibility of "abuse and undue favour" is quite so near to complete, as it would be for the convenience of the right honourable gentleman's acknowledged purposes that we should believe it to be.

All this while, a circumstance which has contributed in no small degree to that composure and tranquil confidence, of which my readers, if I happen to have any, may on this occasion have observed the symptoms, is—a surmise in which I have all along been indulging myself,—viz. that between the opinions of the right honourable author and those of his obscure commentator there does not, on this occasion, exist *at bottom* any very considerable difference.

"More strict provision to guard against any invasion of the law could *hardly*," says the right honourable author, "have been devised." But it will be for the reader to judge, whether the law in question be quite so well guarded against evasion, as, by this saving word *hardly*, the argument of the right honourable gentleman is guarded against any such impertinent charge as that of having said the thing that is *not*. Neither on this nor on any other occasion, could it easily have escaped a sagacity such as his, that a mode of sale, the sure effect of which is to perpetuate a constantly *inferior* price, is not quite so favourable either to increase of revenue or to diminution of influence, as a mode of sale, the sure effect of which is—to obtain, on each occasion, the *very best* price.

Pecuniary competition—*auction*—having, and in other instances to so great an extent—by this same hero, and with the special applause of this same panegyrist, been employed, as and for the best-contrived mode or instrument for obtaining, for such articles as government has to dispose of, the very best price—having been applied, and with so much success, in the case of government annuities—having been applied, and with so much success, in the case of contracts for stores—(for when there is no fraud, it is in form only, and not in effect, that, in this case, there is any difference between *competition* and *auction* in the common acceptation of the word)—and, moreover, in the case of the very sort of article here in question—in the case of *lands*—sale of leasehold interests presenting themselves to view in every newspaper, and even *letting by auction* in the first instance having nothing new in it, it would be a most instructive explanation, to us whose station is *without doors*, if in his next edition the right honourable author would have the goodness to inform us how it happened, that when, in the course of her voyage, economy had reached the latitude of the *crown lands*, she all of a sudden stopped short, and, instead of the best instrument for fishing out the best price, took up with so weak and ill-contrived an one. Is it that in the case of lands, *auction* is less well adapted than in the case of goods to an obtainment of the best price?—less well adapted to the obtaining that best price for leasehold interest in *lands*, to be paid for in money, than

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for *money* to be paid for in *goods*? On the contrary, in the case of goods, to be supplied to government by contract, as in the case in question, with the benefit of competition, the right honourable gentleman, if not already informed, might with little difficulty be informed of cases upon cases, in which the rigour of the principle of competition receives a very convenient softening, from expedients which have no application in the case of lands.

In default of such full and authentic lights, as nothing short of the *experience*, joined to the condescension, of the right honourable gentleman, would afford us, it may be matter of amusement at any rate, if of nothing better, — to us whose station is on the *outside* of the curtain, — to figure to ourselves, in the way of guess and pastime, what, on the occasion in question, may have been passing *behind* it.

Before so desirable a head of reform as that in question could be brought even into the imperfect state dressed up as above by the ingenuity of our right honourable author, "*long inquiries, and most attentive consideration*," we are informed by him, p. 35, took place. Of these "*long inquiries*," no inconsiderable portion, if one who knows nothing may be allowed to guess, were naturally directed to so desirable an object as that of knowing what, in case of a change of the sort proposed, the *eighty* members, of whom we have seen him speaking, would be disposed to think of it: and of the "*attentive consideration*," no inconsiderable portion (it is equally natural to suppose) was bestowed upon the *objections*, which an *innovation* of this sort could not but have given birth to in so many honourable and right honourable minds.

With a set of hobgoblins, known among schoolboys by the collective appellation of the *secret advisers of the crown* — and of whom certain *sceptics* (such has been the growth of infidelity!) have of late (it seems) been found *Arians* or *Socinians* enough to question the existence, — our author's hero, there cannot be any doubt, supposing them always to have had existence, must have had to fight, on this, as on many other occasions, many a hard battle. Of such warfare, the result, on the occasion here in question, seems to have been a sort of compromise. To restraint upon the dilapidation of the revenue, *Fee*, *Faw*, *Fum* could be, and accordingly were brought to submit; — and thus it was that sale, grounded on collusive valuation, was substituted to absolute gift. To the diminution of influence, *Fee*, *Faw*, *Fum* could not, and would not be brought to submit: they would have gone off to *Hanover* or to *Hampshire* first: — and thus it was that sale, grounded on collusive valuation, was preferred to sale *for the best price*.

PAPER VII.

OBSERVATIONS ON MR. SECRETARY PEEL'S HOUSE OF COMMONS SPEECH,

21st MARCH 1825,

INTRODUCING HIS

POLICE MAGISTRATES' SALARY RAISING BILL,

(*Date of Order for Printing, 24th March* 1825.)

ALSO ON THE

ANNOUNCED JUDGES' SALARY RAISING BILL, AND THE PENDING COUNTY COURTS BILL.

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1. Clauses six: of minor importance, the four last: of major, the two first: whereof the second for establishing the measure: the first (the preamble) for justification of it.

Measure, £200 a-year added to the salaries of the existing thirty police magistrates. Original salary, £400 — see below. Last year but two (3 G. IV. c. 55,) so says clause 1st, — £200 added to it. Already comes the demand for as much more.

A reason is wanted — and such an one as shall amount to a justification. Ready at

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hand is a complete one, and not less concise than complete; one single word — *expediency*. "And whereas it is *expedient* to increase the said salary." The House has *standing orders* — Parliament has standing *reasons*: at any rate it has this one, and this one is the standing representative of all others. To the wise, and from the wise, this one word is sufficient.

For this second £200 it is all-sufficient; whether it might have served equally for the first, time for search is wanting. But I would venture a small wager, that on that occasion it did so serve: it will serve equally well for any number of others. It is made of stretching leather. It *works well*, and wears well: it will be as good a thousand years hence, as it is at present. That which is *expedient* is *expedient*. What can be more *expedient* than *expediency*? .... I could not refrain looking. I should have won my wager. The *expediency* reason is not indeed applied exclusively to the salary-raising clause (No. 6,) but it shines in the preamble; and in that clause the lustre and virtue of it extends to all the others.

According to usage, the sum is left in blank in the bill: according to usage, the blank is filled up by the eloquence of the minister.

After having thus done the one thing needful, and stamped the measure with intelligibility, he might not perhaps have done amiss, had he left the justification of it to the wisdom of parliament, as above.

That injustice may be completely avoided, misrepresentation as far as possible, the *Times* and the *Morning Chronicle* — two of the most accredited sources of information — have upon this occasion been drawn upon, and the matter divided into numbered paragraphs; and, for the grounds of the respective observations here hazarded, reference has, by means of the numbers, been made to those several paragraphs.

Original salary, £400 a-year (see below.) Last year's addition, £200 a-year. Existing, what? £600. Magistrates, thirty. Aggregate of the addition, £6000 a-year: aggregate of the now proposed addition, another £6000 a-year; together, £12,000. Nature of the demand clear enough: not to speak of *reason*, which seems altogether out of the question: not so the alleged *grounds* of it. To tread them up has been *tread-wheel* work. Result, what follows.

Evils proposed to be remedied, deficiencies: 1. Deficiency in appropriate intellectual aptitude; 2. Deficiency in time employed in attendance. As to aptitude, during the £400 a-year (so says No. 2,) incompetence total. Thus far aptitude: the same certificate may, without much stretch of inference, be made to apply to quantity of attendance. These are the evils for which the second £200 a-year, multiplied by 30, is to suffice as a remedy. The first dose was administered two or three years ago: already it has been found insufficient, else why apply for another? But that which a single dose cannot effect, another dose may; and if this does not, others and others after them are at hand from the same shop.

For the remedying of these evils, the reality of them being supposed, begin as above and end as above: — the means provided by the wisdom of parliament.

That wisdom having thus exhausted itself, — for ulterior remedies, how little soever needed, comes, as will be seen, an additional supply, provided by administration: provided by the genius of Lord Sidmouth, who invented them; by the magnanimity of Mr. Peel, who disdained not to adopt them. They are — future exclusion of all non-barristers: ditto of all barristers of less than three years' standing. I speak here, and of necessity, of the two secretaries, late and present. For it is by Mr. Peel and his successors in that office, if by anybody, that these remedies are to be applied. Parliament is to know nothing of them: parliament is not to be trusted with the application of them.

Viewing all this wisdom and virtue through the medium of the *greatest-happiness principle* (a principle which has been accused of giving to financial objects rather a yellow tinge,) I have the misfortune of seeing the whole speech in a considerably different point of view: — (1) The alleged evils — the inaptitude, and the non-attendance — neither of them proved by it. (2) Supposing the disorder proved; the supposed remedy, parliamentary and ministerial, as above, inefficient to any good purpose; efficient to a very bad purpose; but both these evils, though not proved by the right honourable secretary, I admit, and, as it seems to me, probabilize, the existence, (3) at the same time, of both. (4) So doing, I venture to propose a remedy, which, for reasons assigned, seems to me a promising one — and the only one which the nature of the case admits of, without some change in the whole judiciary system, such as in part has been, and with large amendments will again be, submitted to the public, but which it would be altogether useless, as well as impracticable, to insert here.

Alleged Evil 1. — Deficiency in appropriate aptitude. Here I take upon me to say *not proved*. Here I am all confidence. *Subpœna* in hand, I call on the right honourable secretary. In No. 11 stands his evidence — "Present police magistrates" (per *Times*) "of the highest personal respectability." Per *Morning Chronicle* — "their knowledge, experience, and respectability," — (all thirty of them) — "and their services had already proved the importance of the duties they had to fulfil." Per *Times*, again — "They per-

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formed their duties" (and *that* not only to the satisfaction of the right honourable secretary, but) "to the great satisfaction of the country."

This being unquestionable, what is become of the evil, and what need can there be of a remedy?

What a scene is here! The right honourable gentleman at daggers-drawn with himself! How to account for it? One way alone I can think of, and it is this:—the force of his eloquence overpowered his memory. While, with so much pathos, he was lamenting, on the part of a certain set of persons, the deplorable want of aptitude, — he forgot that, before he sat down, he had to deliver, in behalf of the selfsame persons, a certificate of accomplished aptitude. When at last the time had come for the delivery of this certificate, he had already forgot how large a portion of his speech had been employed in giving contradiction to it. To answer the purpose for which they are made, what must be the complexion of the assertions of inaptitude uttered with such entire confidence? They must be at once true and false: true, for the purpose of proving the necessity of the additional bonus; false, for the purpose of entitling these thus meritorious and actually existing persons (for this slides in *sub silentio)* to receive, before any of their future contingent colleagues have been in existence to receive it, a full share of the benefit of it. Admit him to be in possession of the power of giving truth to a self-contradictory proposition, the right honourable secretary proves this his *probandum*, and thus far justifies his measure: refuse him this accommodation, he stands self-confuted, and his argument is somewhat worse than none.

Were ministerial responsibility anything better than a word, the task the right honourable gentleman had charged himself with was (it must be confessed) rather a delicate one. English punch, according to the Frenchman in the jest book, is a liquor of contradiction: a compound of a similar complexion was that which, on occasions such as the present, a situation such as the right honourable secretary occupies, gives him in charge to mix up, for the entertainment of Honourable House. Except in the case of an underling whose character is too offensively rotten not to make it matter of necessity to suffer him to be thrown overboard, for all official men in general — high and low — there is but one character: a general character for excellence, tinged here and there with a little difference of colour, corresponding to the nature of the department. The idea looks as if it were taken from the old chronicles: where, with decent intervals, one portrait serves for half-a-dozen worthies: one town for the same number of towns, and so as to battles and executions. Time and labour are thus saved. This universal character puts one in mind of an ingenious document I have seen, sold under the title of the Universal Almanac. A copy of it has been supposed to be bound up with every cabinet minister's copy of the red book. Like a formula for convictions, it might be inserted into each particular, or into one general, act of parliament. Subscription to it, and oath of belief in it, in relation to all official persons whose salaries had risen or should hereafter rise to a certain amount, might be added to the test and corporation acts: and, without need of troubling the legislature, Lord Chief-Justice Abbott, or Lord Chief-Justice Anybody, would hold himself in readiness to fine and imprison every man who should dare to insinuate that any such person that lives, or that ever has lived, or that ever shall live, is, has been, or ever can be, deficient in any one point belonging to it.

Without violation of this standing *character rule*, he saw how impossible it was, that any the slightest shade of inaptitude, actual or possible, in any one of its modes, could be laid upon the character of any one of the existing incumbents. "With the character of all of them, all who heard him" (see No. 11) "were acquainted." Remain, according to parliamentary usage, the only persons with whom any such liberty could be taken — their future-contingent, and thence as yet unknown successors.

Here, however, comes something of a difficulty. Evil as above — disorder as above — inaptitude in some shape or other: remedy as above, of the preventive stamp, the £200 a-year. Good: supposing disorder or danger of it. But where is the room for it, where there is neither the one nor the other? Sole reason, the word *invidious*. Invidious it would be, and that being the case, "poor economy" — "so poor," says No. 8, "that there could not be a worse" — to refuse to those gentlemen whom everybody knows, that which will be given to those of whom, without disparagement it must be said, that they are gentlemen whom as yet nobody knows.

So much as to *aptitude:* and the alleged, and by the same person at the same time denied deficiency in it. Remains, as another and the only remaining subject-matter of deficiency, the article of *time* — time employed in official attendance. This, too, is another delicate topic. Standing so near to aptitude, and, in particular, to the moral branch of it, nothing determinate in relation to it could be hazarded: allusion, insinuation, yes: but nothing that applied to anybody. "Great increase of population." — (No. 1, *Morning Chronicle.)* "The duties of the office would require constant attendance" — (No. 5, *Morning Chronicle ;)* — "almost constant attend-

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ance"—(No. 4, *Times.*) Hereupon comes the same troublesome question as before. This constancy of attendance, is it not then paid by the present gentlemen? Answer, as before, yes and no: and, to secure it at the hands of their future colleagues and successors, comes the necessity of the same sweet security — the £200 a-year: this £200 a-year to be given, and without condition, not only to those unknown persons, but moreover, and in the first place, on pain of hearing the word "invidious," and bearing the stigma of "poverty," given also to the existing gentlemen, in whose instance there is so much, and so little, need of it.

So much for the right honourable secretary's two evils, and his proof of their existence. Now for his two ministerial remedies in aid of the £200 a-year parliamentary one: — 1. Exclusion of all but barristers; 2. Exclusion of all barristers but three-year old ones. Problem, which his rhetoric or his logic, or what is sometimes more powerful than both, his silence, has undertaken for the solution of — how to prove, that, by these two exclusions, added to the £200 a-year, — appropriate aptitude, moral, intellectual, and active, adequate to the situation, together with adequate plenitude of attendance, will be produced.

By this policy, he secures, to this class of his *protegés*, the aptitude, proved by the right to the name of *barrister*. Now, then, what are the qualifications, the sole qualifications, of the possession of which any proof whatever is given by the right to bear this name?— Answer — Being of full age; payment of a certain sum in fees and taxes; and, on a certain number of days sprinkled over a surface of five years, eating and drinking in a certain place, or therein making believe to eat and drink. Sum: between one and two hundred pounds; place, the hall of an inn of court; number of days, twenty in every year: total number of days, a hundred. As to the *making believe*, this option must not be omitted: nor yet the hour — four, or half-past four; for neither the hour nor the fare accord well with the taste of the class of persons for whom, it will be seen, the £800 is destined.

As if this security were not strong enough, now mounts another upon the shoulders of it. After five years employed in the above exercises, then comes a *repose* of three years more; for not less indeed than these three years more, must this class of the right honourable secretary's *protegés* have borne the name of *barrister:* but, as to the exercises of eating and drinking, if it be agreeable to the gentleman to perform them, he is no longer burthened with any limitation in regard to place. The right honourable minister, in the pathetic part of his speech (No. 4,) asks a question: May logic, in the person of an obscure individual, be permitted to do the like? Comparatively speaking (for I mean nothing more) — service for five years, (the usual time,) as clerk to an attorney, would it not be a security, though not so dignified, somewhat more efficient? The clerk could not be altogether ignorant of law, without his master's suffering for it. The master, therefore, has some interest in causing him to learn it; the clerk in learning it. But more of this further on.

The security is of Lord Sidmouth's invention: so his right honourable successor assures us: and much inferior authority might have sufficed to command belief. It is just the sort of security, that the genius of his noble and learned oracle, or of Mr. Justice Bailey, or of Mr. Justice Park, might have devised: of all these luminaries, the collective wisdom was perhaps expended upon it. For all these luminaries, the name of barrister, with three years' wear of it, was security sufficient: and, if he is sincere, Lord Sidmouth's successor looks no deeper than to names.

So much better in their eyes is a nominal security than a real one, that when a real one offers, it is deliberately put aside — (No. 6.)

The design of the right honourable secretary found the class of country gentlemen standing in its way: a class, before which ministers, not to say kings themselves, bow, was not to be lightly dealt with. Something in the way of compliment to them was indispensable; the compliment, however, was unavoidably of a somewhat ambiguous character, as, not being eminent lawyers, they could not serve the purpose. Inaptitude on their parts — relative inaptitude at least — it was necessary should somehow or other be insinuated.

As to this matter, if *absolute* inaptitude would content the right honourable gentleman, my feeble suffrage would see no very cogent reason against joining itself to his: but, as to comparative inaptitude, in the case in question — comparative in relation to his three years' old, and theretofore, *perhaps*, eating and drinking barristers, so far I cannot go with him. For, not only country gentlemen at large, but country magistrates — nay, and such country magistrates as have been in use to perform — and that for whatsoever length of time — the duties of this very office — such are those he puts from him. This being decided, for extinguishing all pretensions to appropriate aptitude on their part, the purpose of his argument required a dyslogistic epithet. *Routine* is accordingly the epithet, by which the whole of the business they have been accustomed to is characterized. Yet, make the least of it, it at any rate composes the greatest part of the business of the very office from which he is excluding them: one more look, and you will see that the business they have been accustomed to has, in the instance of many

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of them, and may, if he will vouchsafe to adopt them, be, in the instance of all these children of his adoption, made to comprise the whole of it. Such being the candidates whom he puts aside as unfit for the business, what are the objects of his embrace? Three-years old barristers, altogether unused to business of any kind; unless eating and drinking, or making believe to eat and drink, is business. To a person who has never dined, or made believe to dine, at an inn of court hall, all this may seem exaggeration, to say no worse. *I* speak not only from observation, but from experience. Such is my good fortune, never as yet have I been convicted of perjury: nobody has ever given me anything for saying this: my evidence is therefore good evidence; and it applies not less to the making believe to eat and drink, than to the actual exhibition of those so perfectly conclusive, and exclusively receivable, tests of aptitude for the office of magistrate. Thus the matter stood sixty years ago, and thus, I am assured, by equally competent witnesses, it stands still. Let it not be said, the place being a law place, the conversation turns of course upon law. There being no conversation upon anything, there is no conversation upon law; for, unless you happen to be already acquainted with him, you have no more conversation with your messmate, than if he were at the antipodes.

To complete his demonstration of the superiority of his three-years old barristers without any experience, to a quondam country gentleman with thirty years of appropriate experience, the right honourable secretary brings exemplification from the building act, and tells Honourable House of a case under it which (says No. 7) had occupied "a couple of days, during which surveyors had been examined on both sides." Now, in a case of this sort, what is there that should render even an experienced magistrate less competent than an equally experienced barrister? What has it to do either with equity or with common law? Country magistrates, who, not a few of them, are themselves builders — who, all of them, are accustomed to order buildings to be built — built with perhaps a little of their own money, and sometimes with rather too much of other people's—what should hinder them from being at least as well conversant with the subject as the most learned inhabitant of Lincoln's Inn Old-buildings? Here, for law is an act of parliament, nothing more: for fact, evidence about something that should or should not have been done under that same act. The *days* thus employed, what would they have been to the purpose, if, instead of two, there had been twenty of them?

At the winding up of his speech (No. 10,) to place above all contradiction the indispensableness of the £200 a-year, comes a trope — the word *refuse* — which seems to bid defiance to all endeavours to descry anything in it beyond the intensity of the desire to give birth to the indispensable effect.

Barristers — all barristers in the lump — are, by this figure of speech, divided into two classes: those who will serve for £600 a-year, and those who will not serve for the £600, but will for the £800. As to the meaning, it is indeed intelligible enough: not so, by any means, the grounds of it. That it were so is, however, rather to be wished: for those — all those, who would be content that the £600 a-year, public money, which the right honourable secretary is thus buying creatures with, should be saved—all those, barristers as they are, are branded with the common name of *refuse*. Such is the contempt — the undisguised, the thus loudly proclaimed contempt, in which sincerity — I mean always comparative sincerity—is held by this one of our head guardians of public morals. Insincerity is among the qualities professed to be possessed by barristers: the only one which is sure to be possessed by any of them. Now then, true it is, that no reason can be alleged for supposing, that, so far as *disposition* goes, those who get least business are behind-hand in this endowment, with those who get most: but disposition is one thing — practice is another: and the less a man has manifested of it, the more deep-drawn is the contempt which he receives on his head at the hands of the right honourable secretary, from the bucket lettered with the word *refuse*.

Meantime, here stands a strange mystery. Refuse — were there ever such a plenty of it, would the hand of Mr. Peel pick it off the dunghill, and place it on high — this refuse? Forbid it, consistency, at least. For who is it that prophesies it of him? Is it not Mr. Peel himself? But shall he be suffered thus to deal by himself? Shall Amyntas murder Amyntas?

One possible solution remains, and but one. On the part of a barrister, willingness to serve in the office of police magistrate for so little as the £600 a-year, is not merely evidence of his inaptitude for that office, but conclusive evidence. This meaning, however strange, being intelligible enough — we have thus far something tangible to examine. For, supposing none but refuse willing to serve, refuse he must take up with, or have none: and thus, it being Hobson's choice, there is no inconsistency either in his making it, or in his avowing the making it. But suppose enough willing who are *not* refuse, what matter is it how many there are who *are* refuse? Will he, then, having good and bad before him, both in plenty, take in hand the bad, putting aside the good?

The stock of difficulties is not yet exhausted. Comes now a point for him to settle with cer-

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tain gentlemen. Of the thirty gentlemen at present serving in this situation, *four* I see, who, by his own account (No. 11,) are serving, and for these three years, or thereabouts, have been serving, at the low price. None of them, I hope, were born in Ireland, or in the United States: if yes, there may be danger in the case. "Sir," they may say to him, one after another, "do you mean to call me *refuse?*" One consolation is, that refuse, as according to him they are (as per No. 1,) they are not the less included in his certificate (No. 6) of universal aptitude. This, with the assurance of the additional £200, may, it is hoped, soften them. Was it for this, that the £200 was extended to those in whose instance experience, if he is to be believed, has demonstrated that for any other purpose it was not needed?

One lumping assumption there is, upon which the whole strength of his argument rests. Faintness of prospect, such as to induce a man in the profession to take up with £600 a-year certain, charged with moderate labour, is conclusive evidence of his not being fit, either for the profession of barrister, or for the office of police magistrate. How brisk are the right honourable secretary's conclusions! Involved in the assumption is this — that all who have not actually a certain quantity of the business in question, or at least a strong assurance of it, are unfit for it. Now then, how stands the matter in point of fact? In a prodigious degree more than any other, this profession is always overstocked. In this same profession, the quantity of business that shall be deemed sufficient to produce a refusal of the office, with the £600 a-year — let the fixation of it be left even to him — for one who is in possession of it, there may be two, or more likely a much greater multiple of one, that are *not* in possession of it. Here then, according to his own reckoning, for one who is *not* refuse, there will be the two, the three, the half-dozen (where shall we end?) who *are* refuse: and yet, as above, of this refuse, for aught he can know, numbers there are in any proportion, whose aptitude is at the highest pitch, and who yet, if they have either common prudence, or disposition to follow so many examples as are before them, will not disdain to pick up the supposed disgraceful pittance. Let me not be accused of taking an undue advantage of an unguarded word. Substitute the tamest word the language furnishes, the arguments remain the same.

Meantime, who does not know that there are certain points of aptitude, in respect of which a man may be very indifferently qualified for making his way at the bar; and yet, perhaps, be but so much the better qualified for the exercise of the functions of the office in question, being, as they are—with Mr. Justice Bailey's leave be it spoken—the functions of the judge. Rhetoric is the leading talent of the barrister; logic, of the judge: and, between the two, the strife is not much less fierce than, according to the poet, between liberty and love.

Be this as it may, almost everybody knows — and a man must be a secretary of state, or at least a cabinet minister, not to know — that in this profession, above all others, success depends upon accident, at least as much as upon aptitude: — that it has for its proximate cause a certain opinion in the heads of attorneys: and that, if external circumstances, altogether independent of inward endowments, do not concur in the generation of this opinion, a man may unite the rhetoric of a Murray with the logic of a Dunning, and, at the end of a long life, die, like Sergeant Kemble the reporter, without ever having clasped to his panting breast the blessing of a brief.

Nor yet are we out of our wood; for still remains one topic, to thicken the perplexity. It is that of the *length of standing* — the yet remaining one of the three branches of the right honourable secretary's security for aptitude. To render a barrister an object of his choice, three years (says No. 3) must be his length of standing. Now then, of the number *three* thus applied, what was the design?—to extend the number of admissible candidates, or to narrow it? The too young or the too old — for the exclusion of which of these unapt classes was it intended? The too young, says the wording, abstractedly considered: the too old, says the word *refuse*, and the sort of argument conveyed by it. For, these are they, who, by their willingness to accept of so low a price as the £600, have given the requisite proof of inaptitude — of their despair of barrister business — and consequently of their inaptitude for the office of police magistrate. Thus incompetent, says the argument, are the old barristers run to seed. — Turn now to the three-year-olds. In the breasts of all this blooming youth, no such self-condemning and inaptitude-proving despair, can have had time to form itself. At this short standing, — unless here and there a special pleader, who has shown himself by practice under the bar, be an exception, — no practice, no expectation — consequently no disappointment. Expectation! How should there have been any? After these three years, how long (shall we say) continues the time for *junior openings*, which require nothing but a few words got by heart, and half-guinea *motions of course*, which require not even that? — sources not furnishing, upon an average, the tenth part of the supposed disdained £600. Now then comes the comparison. To these men, in whose instance, by the admission, or rather by the assertion, of the right honourable secretary, the probability is — that they have had no appropriate experience worth

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mentioning, — to these men is to belong the exclusive chance of being chosen for the office, while those, who may have appropriate experience, in any quantity not incompatible with the choice of £600 a-year for life, charged with the already very moderate, and naturally still decreasing labour, which will be seen presently, — are for that reason to be regarded as being proved in hopeless degree unapt, and on that ground are to be excluded from all chance.

"But you have forgot," says somebody, "the wonder-working £200 a-year." Not I indeed. But forasmuch as, in the case of the three-year-olds, it is to create aptitude out of nothing, — I see not why it should find less difficulty in creating it, in the instance of the twenty or twenty-three-year-olds, to whose stock of the requisite materials no limitation can be assigned, short of that which is applied by an assurance of more than the £600 a-year by professional practice.

To prepare Honourable House for the reception of the above logic and the above rhetoric, right honourable secretary sets out, I see, with history. Original salaries, £400; result per *Times* (No. 2,) "incompetence:" per *Morning Chronicle*, "total incompetence." Cause and proof of the incompetence, manifest: out of twelve (the original number) barristers, no more than *three*. Being barristers, these three should naturally have produced a five-and-twenty per cent. discount from the totality of the incompetence; but *perhaps* they were of the *refuse* sort: and grant him but this, the exception, being thus only apparent, gives strength, rather than weakness to his sweeping rule. Here, too, sincerity compels me to be totally recalcitrant: major, minor, conclusion — to nothing can I accede. Incompetence, neither proved nor probabilized: power of the first £200 a-year to increase competence (supposing a deficiency of it,) denied by me: supposing it admitted, need of the proposed second £200 a-year for producing competence, denied again: the actual production of it having been so triumphantly proved by me, as above: proved by the most irrefragable of all testimony — his own evidence.

Proof of the incompetence of the original nine, — *non-barristership*. With so concise, and at the sametime so satisfactory a proof, especially to the barrister part of the audience, — at this stage of his history in union with his logic, the right honourable secretary might perhaps have done as well, had he not only begun, but ended: not much strength, it is believed, will either of these his supports receive from the particulars. The year of the establishment being 1792, — the nine are all of them, by this time, gathered to their fathers; indeed, the right honourable gentleman's urbanity considered, the sentence thus passed on them proves as much. From such a quarter, a more drastic condemnation, unless it were by the word *refuse*, can scarcely be imagined. But they had not risen (poor gentlemen!) to the rank of those, the feelings of whose surviving relatives can make claim to the protection of Lord Chief-Justice Abbott: and, if they had, it is not against a secretary of state, nor even against a member of Honourable House—speaking in his place—that it could be afforded. Instead of the sweet satisfaction of seeing fine and imprisonment inflicted on the gainsayer,—they must therefore, under their affliction, put up with such poor support, as an obscure and unpaid ex-barrister of the refuse class has it in his power to give.

With an exception (of which presently,) of no one of the devoted nine do I remember anything. The sort of *character evidence* which I have to adduce for them, is therefore none of it of that sort which is called *direct*: none of it more than *circumstantial*. Nor is it the worse for being so; for, as applied to character, the value of direct evidence, unless it be from some such person as a secretary of state, may be judged from what is above, although it is from a secretary of state.

To return to the history. — In regard to appropriate aptitude — (*competence* I cannot keep to, since it includes, not to say exclusively denotes, acceptance at the hands of those to whom inaptitude is a recommendation)—in regard to appropriate aptitude, the question is between the nine defunct and reprobated original magistrates, and the right honourable secretary's magistrates in *petto* or in *embryo* — his three-year-old barristers. Of these, as yet unborn babes of grace—offspring of the imagination of the right honourable secretary — the title to the quality of aptitude has been already disposed of: circumstantial evidence and proof presumptive of inaptitude, — want of experience in business, or, more shortly—their not being *men of business*. Now then for my nine clients. The right honourable secretary's list of them (No. 2) has been seen: major, one; clergymen, three; — (oh fie! what! after the major?)—starch-dealers, two; Glasgow trader, one. Now, with the exception of the three clergymen (whom I shall leave to those so much more efficient advocates, of whom no gentleman of their cloth can never be in want)— magistrates for whom I cannot find any tolerably presumptive evidence of their having been men of business in any way — of all the others I am bold to affirm that they had been men of business.

I will go further, and add, — nor is there any one of those occupations, experience in the business of which does not afford stronger presumption of aptitude — even in relation to the business of the office in question, than

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can be afforded by an utter want of all experience in any kind of business. The major, being a major, must have passed through the several grades — ensign (or the equivalent) lieutenant, captain: and, in all of them, if commanding men by scores and hundreds is business — he must have been a man of business. The starch-dealers, they too must have been men of business; for buying and selling starch is doing business: and in that business, with whatever degree of success, they could not but have been exerting themselves, forasmuch as their subsistence depended upon it. All this, too, in addition to their having been *bonâ fide eating* as well as *drinking;* to wit, from the hour they gave up the nipple, down to the time of their appointment; which is rather more than can be alleged in favour of the aptitude of the right honourable secretary's *protegés*, unless it be the difference between the performing of those exercises at a man's own home, and the performing them in the hall of an inn of court: which difference I cannot bring myself to regard as constituting, to the purpose in question, a very material one.

I come lastly to the Glasgow trader. Being a trader, he too must have been a man of business. As such I might leave him; but, it having fallen in my way to know in what ways, and in how conspicuous a degree, with reference to the business of this very office, he proved himself a man of business, I shall venture a few particulars. This man was Patrick Colquhoun: and, unless destroyed by the comparative smallness of his remuneration, his relative aptitude has stronger, as well as more incontrovertible proofs than can, I trust, be produced, not only by the right honourable secretary's unknown *protegés* in embryo, whom even I look down upon as so many chits, — but even by the whole of the actually existing barrister-magistrates, produced by the additional £200 a-year, to whom I make my bow, whoever they may be. — Treatise (I mean) on the Police of the Metropolis, Treatise on Indigence, Treatise on the Office of Constable — and, for aught I know, others (for I have not time to hunt for them) bearing most directly upon the business of this very office. As to the first-mentioned — of the number of its editions I am afraid to speak, not having the last before me: the fifth, which I have in hand, is as early as 1797, and there must have been several others after it. Into the merits of them I cannot afford to enter, this paper not being either a *Quarterly*, an *Edinburgh*, or a *Westminster Review:* nor, if I could, could I venture to put my judgment in competition with the single word *incompetence*, from the lips of the right honourable secretary. I must leave them, therefore, to that evidence: and, if that evidence be not more probative, than any which the right honourable secretary has adduced in favour of his future *protegés*, or even in favour of their existing predecessors and intended colleagues, I must give up my cause.

Evidence of this sort in abundance must be omitted. One lot is too pointed to be thus dealt with. To this Glasgow trader, whatever may be the value of it, was the public indebted for the first addition made to the number of those offices, and the right honourable secretary for a proportionable part of the patronage, to the value of which he is thus labouring to give increase. It was the addition made by the Thames police act, 39 and 40 Geo. III. anno 1800, ch. 87. Of this business, it fell in my way not to be altogether ignorant. A bill was necessary. Colquhoun had found the facts. I ventured to supply the law. I drew the bill, leaving out as much of the customary surplusage as I durst. In the procedure clauses, for giving execution and effect to the law, I ventured as far as I durst, and further than any one had ventured before. Incompetent as the performance could not but be, coming out of such hands, change of hands rendered its competence unquestionable. At my humble request, a learned gentleman of the first distinction (I know my distance better than to mention him) received it into his, and, without the change of a word, it became law. The plan had been formed by Colquhoun, in conjunction with I forget what body of mercantile men, who wanted a sort of board of which he was to be at the head. The board they did not get: but a present of £500 testified their sense of his competence with relation to police business. Such was the nameless Glasgow trader: his name would not have been quite so suitable to the right honourable secretary's purpose, as it is to mine.

As to the three clergymen, leaving the question as to their incompetence to be settled by the honourable secretary with the archbishops of Canterbury, defunct and living, the lord chancellors, and the several lord lieutenants, I proceed to the remaining one of the two evils, for which the second £200 a-year, as provided by him, is to operate as a remedy. This is — the deficiency in the article of *time:* the deficiency, if any, present or future, in regard to the quantity of time employed, or eventually about to be employed, by the magistrates in question, in the fulfilment of their duties.

On this evil the right honourable secretary touches, it should seem, with rather a tender hand: allusion and insinuation, rather than assertion, are the forms of speech I see employed. (Per No. 1) — In the business "great increase:" cause, ditto, partly in acts of parliament, partly in population. Triumphant tenders of papers in proof of all these facts,

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— to which might have been added, the existence of the sun at noon-day.

Of the existence of the thus delicately-assumed evil, — at the hands of the right honourable secretary I look in vain for other proof. From that most authentic source, somewhat less explicit is the evidence I see to the contrary. It is that which has been already seen: it is made of stretching leather: it is wide enough to be applied to whatever can be desired. By the thirty gentlemen — (who, it has been seen, are at once so competent, and, for want of the £200 a-year, so incompetent) — these duties, as per No. 11, are performed to the great satisfaction of the country; and this, notwithstanding that, as per No. 4, to prove the necessity of the barrister part, almost constant attendance, he says, is required. Required? Good. But *by whom* was it, or anything like it, ever required? — a question somewhat more easy to put than to answer. By any such attendance, or anything like an approach to it, the place would be spoilt, and no gentleman would accept it: acceptance would of itself be proof of incompetence.

Now then, forasmuch as, in this office, according to the right honourable secretary's opinion, an "almost constant attendance" is required, and accordingly forms part and parcel of its duties; — and forasmuch as, without exception, these same duties are, according to this his evidence, actually performed — performed not merely to *his* satisfaction, but to the satisfaction of the country: — forasmuch as, I say, evidence of the existence of this one of his two evils, is, notwithstanding the prodigious pile of papers, with the mention of which he at once alarmed and satisfied the House, still to seek; — for this deficiency, though it is not in my power to provide a supply, it is not, I flatter myself, altogether out of my power humbly to point out a course by which he may obtain it. True or false, newspaper statement is unofficial statement: unofficial statement is not admitted in evidence, even when no man in Honourable House doubts, or will venture to express a doubt, of the correctness of it. Honourable House knows better than to admit, through such a channel, anything, however well attested, in the character of evidence. Yet are such statements, — unofficial and incompetent as they are, — made use of, every day, in the character of indicative evidence, for the elicitation of acknowledged evidence. This premised, I shall venture to copy from a newspaper a portion of a paragraph: humbly observing, that in every one of the offices in question there exist various persons, from any of whom, if it be agreeable to know it, Honourable House, and in it right honourable secretary, may learn at any time, whether, in this same newspaper statement, there be any and what portion and degree of truth, and how far the actual agrees with their "required constancy of attendance."

"We believe," says the *Globe and Traveller*, as quoted in the *Examiner* of March 27, 1825 — "we believe a magistrate attends at each of the offices from twelve to three, and looks in again in the evening. There are three magistrates in an office, so that this duty is imposed upon each of them *twice* a-week. We know that there is some business for which the *presence* of two magistrates is necessary; but it is to be recollected, that at almost all the offices, *volunteer* magistrates are frequently in attendance. We are convinced that a very large statement of the time each magistrate needs be in attendances is — every other day, three hours in the morning, and twice a-week, two hours in the evening."

In regard to this evil, if anything that comes from so incompetent a quarter could be heard, I could, I think, do something towards tranquillizing the right honourable secretary. Aptitude is not quite so easily secured as asserted. But *attendance* — the maximum of possible attendance — every master-man, how humble soever in condition — every master-man that really desires it, has it. To the extent of his desires, the right honourable secretary has it in his own individual office. With the assistance of Honourable and Right Honourable House, to the same extent he may have it in the instance of every other public office without exception. If, then, in any instance, and in any degree, he fails to have it, it is because he does not desire, not because he is not able, to obtain it.

You may maximize attendance, and you may minimize it. The maximization problem has been solved, and with illustrious success, in the case of the children of the indigent, when worked upon a steam scale. As some are killed off, others succeed: and capital — the one and the only thing needful — accumulates. Examined in his place, or elsewhere, one honourable member of Honourable House could give, on this point, if I have not been misinformed, instructive information. His name, if I mistake not, begins with a P.

Those whose will it is to minimize attendance might, if in the above newspaper report there be any approach to truth, receive instruction, if it be worth while, by applying to another P., no less a P. than Mr. Secretary Peel. But it is not worth while: those who understand nothing else, understand this. Everybody, man and boy, knows how to be idle — every man knows what it is to stand looking on, and helping, while others are idle. Every man knows what it is to pay, as well as to be paid, for doing work, and all the while seeing and leaving it undone. Other arts travel at their different paces. Under

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Matchless Constitution, the art of sinecurism is at its acmè.

In my small way, I have a manufactory of my own, in which, with the same sort of instrument (imagination) with which the right honourable secretary has manufactured aptitude in the instance of his three-year-old barrister-magistrates, and for my own amusement (as a half-retired chimneysweeper swept chimneys) I make judges. My judges are judges of all work, and of all hours. They do not, it is true, sit, each of them, every day in every year, and on every day, every hour of the four-and-twenty; but, in each judicatory, they, following one another, do all this. *When sleeps injustice, so may justice too*, said a voice to me in one of my dreams. My muse is but a hobbling one: — she has not been to school to the laureate's: the *too* is somewhat of a botch: but I remember her so much the better. In one thing I endeavour to copy the right honourable secretary's noble and learned friend — it is the quality so judiciously selected for his eulogium — consistency. The ends to which my judicial establishment, and my procedure code, in conformity to the constitutional code to which they belong, are from beginning to end directed, are the ends of justice: under Matchless Constitution, the ends to which the judicial establishment is, and the procedure code, if there were any, would be, directed, — are the ends of judicature. What these are, it is not for me to presume to inform the honourable secretary: over and over again he must have heard them, amidst peals of laughter, or floods of tears, from his learned and matchlessly-consistent friend, before or after the second bottle.

Such being the bill — such the ostensible and declared objects of it — such the evils asserted or insinuated — such the remedies provided — such the arguments employed in proof of the evils, and in recommendation of the remedies — what, after all, is the real object? The topic must not be omitted: though to few of the readers, if any, whose patience has brought them thus far, can anything on this head be regarded as much more needed, than were the honourable secretary's proofs, of increase of population and acts of parliament.

Loss, by waste of public money, is in every instance an evil: in the present instance, loss in the article of aptitude is, in my view of the matter, a still greater evil. To the augmentation of aptitude, perfectly inoperative will be the £200 a-year: not so to the diminution of it. £1000 a-year is a salary for a nobly related puisne, at one of the highest boards. I am fearful of mistakes, and have no time for researches. When red books had the salaries to them, £1000, if recollection does not mislead me, was the number attached to the office of Puisne Admiralty Lord.

In the heaven of office, there are many mansions. Of a Police Magistrate, the station cannot be altogether upon a level with that of an Admiralty Lord: but the £200 a-year will raise the lower office to a level next below that of the higher one. To a reverend youth — even to one born honourable — a spiritual benefice yielding £800 a-year is not altogether an object of disdain: — eased, as above, of labour, though not so perfectly as in the other case, why should even this temporal one? Without some improvement, *attendance* is a burthen the lay incumbent cannot be altogether eased of: *thought* he may be eased of without difficulty. When two magistrates are necessary, there must be a non-honourable to yield *thought*, but the honourable will serve as well as the non-honourable to yield *auspices:* when one magistrate suffices, the dignity of the honourable man will need no disturbance. But, the only case, in which burthens so degrading to honourable men will require to be imposed, is an extreme case. Naturally speaking, there will in general be unpaid magistrates enough, to whom, for the time and trouble of attendance, the power and the amusement will afford sufficient compensation. One of these *suppléans*, the non-honourable, takes care to provide, each time, for his honourable friend and colleague. Thus is the labour of the honourable minimized: and, sadly have his non-honourable colleagues been deficient in what everybody owes to his rank, if the quantity of time actually employed in official duties is anything more than an impalpable one.

Here, then, in short, comes the effect and use of this second £200. The first did not bring the place within the sphere of the highly-connected class: the hope is—that the second will: it will, at any rate, form a basis for a third.

> "What makes all doctrines plain and clear?
> "About two hundred pounds a-year."

So stood the matter in Sir Hudibras's time. But now the £200 must have an ever increasing number of others to mount upon.

Seldom, if ever, do I endeavour to overthrow, without endeavouring at the same time to build up. For maximizing the chance in favour of everything needful, I have a recipe of my own, and that exemplified upon the largest scale; the principle of it will be found in another part of this volume, or in one that will soon follow it. Alas! what hopes can there be for mine? It is the very reverse of the right honourable secretary's. It may serve him at any rate to laugh at. *His* plan excludes experienced magistrates, admitting nobody but nominal barristers. Now then comes the laugh:—the most efficient and approved of House of Commons arguments. *Mine* admits nobody but experienced magis-

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trates; excluding barristers, nominal and real all together.

My plan serves at once for aptitude and attendance. As to aptitude, — for *that* I require, as a qualification, previous admission into the magistracy, and thereafter, unpaid, but constant and adequately proved attendance, at some one of the existing offices; attendance for a certain length of time, say five years: to wit, when from the commencement of the plan that length of time has elapsed, and till then for as great a length of time as can be had.

Now for a contrast, between my experienced magistrates, and the right honourable secretary's unfledged barristers — adding, if so it please him, any number of grey-headed ones.

1. As to moral aptitude, my magistrates will have been engaged in the exclusive support of *right* — or at least of what the *legislature* has pronounced *right*, — and the exclusive repression of *wrong* — or at least of what the *legislature* has pronounced *wrong*. His barristers will have been occupied either in nothing at all, or in what is so much worse than nothing, promiscuous defence of right and wrong, with the universal predilection for wrong, as being the best customer.

2. As to intellectual aptitude, composed as it is of appropriate knowledge and judgment, my magistrates will, for the whole of their unremunerated length of time, have been employed, on the very spot, in study, and occasionally in practice, in the very field for which it is proposed to engage their remunerated services; in the whole of that field, and in no other than that field, to their consideration will have been subjected, in all their varieties, all sorts of cases which can have grown up in that same field. The right honourable secretary's barristers, with their £800, instead of £600 a-year, — how will they have been occupied? My answer has been seen already. The right honourable secretary's answer the country will be grateful for, if he can find any. But they may have been not only barristers, but barristers in full practice, and all the while not knowing anything more of the business of a police magistrate, than if they had been all the while fighting as army officers. Of practising barristers there are about as many equity as common lawyers. Now, in a police magistrate's practice, what is there that has anything in common with equity practice? Let him bestow a glance on the table to *Maddock's Equity*, and then on the table to the last edition of *Burn's Justice*, or whatever work has now supplanted it, and see whether this is not strictly true. To those abstracts I venture in kindness to refer him, long as the road through may seem to be, as being shorter than through the mazes of his walking dictionary. Those he might get by heart, sooner than an intelligible answer from his oracle; a negative the oracle would not venture to give, and an affirmative he would not choose to give.

3. Lastly, as to appropriate *active* aptitude. On the part of my magistrates, it would be a maximum. By every motive they would be impelled to render it so. At the hands of the barrister, what his right honourable patron does not require, is activity in any shape; all he does require, is existence.

As to attendance, and the means of securing it, to a great degree it is already comprised in the active aptitude just spoken of. But, in whatever possible degree he chooses to have it, he may have it if he pleases: nobody who does choose to have it, ever fails of having it. I will not attempt to trouble him with particular proofs, as they are already in one of my waking dreams.* In manuscript they are already in another or two, and will ere long be in print, if I live.†

This plan would suit both classes. The expectant stipendiaries would not be disinclined to attend, since it would increase their chance of the preferment; the existing stipendiaries would not be disinclined to be *attended for*, since it would increase their ease. How much soever superior the £600 a-year ones may be, to their exploded predecessors the £400 a-year ones, — were they to leave the burthen of the day altogether to the still superior expectants, if such they should prove, the public would not, any more than these same parties, have, in this quiet arrangement, any reason to repine. Ahab had served Baal a little. Jehu hath served him much. What prospect have I not opened! — what an Epicurean heaven! Thirty £600 a-year places, and all sinecures! So many temporal prebends and canonries! With such a *pot-pourri of* sweet arguments, what is there that could not be proved? Laughable and delectable all this — True: but would it be the less beneficial? Not it, indeed. — See Horace's Reports. *Ridentem dicere, &c.*

Suppose not that it is upon this £6000 a-year alone that all this examination has been expended. The expense is but as a drop in the bucket. The reasoning on which it is supported is no such trifle: if good for £6000, not less would it be for £60,000, for £600,000 or £6,000,000. More than even this might, if duly looked into, be seen perhaps to stand upon no better grounds. Be this as it may; by any one in whom curiosity is strong enough, it may be seen how admirable a match it

* Draft of a Judicial Establishment for the use of the French National Assembly. *Vide* Vol. IV. p. 285, *et seq.*

† 1. Constitutional Code, Judiciary Part. 2. Procedure Code, preceded by the Judiciary Part of the Constitutional Code.

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makes with that, on the ground of which Burke for the Whigs, followed by Rose for the Tories, proved, as another part of this volume will show, the necessity of draining, out of the pockets of the productive classes, the last drop of the matter of wealth that could be squeezed out of them, consistently with the continuation of their existence. Practice, it is true, cannot be always rendered altogether co-extensive with theory; but whether the theory actually pursued as a law by government, under the really existing form of government, and under the fictitious entity, called the *Constitution*, is not the thing actually avowed by both parties, may be seen without other trouble than the turning over a few leaves.

Mr. Martin, if eyes or *Morning Chronicle*, April 2, 1825, do not deceive me, — Mr. Martin of Galway, treading in the right honourable secretary's steps, and with a copy of the above speech, I presume, in his memory, — stands engaged, on the 12th of May, to extend his protection to judges, and I know not what besides. While his protection was confined to the helpless and persecuted part of the creation, I followed the honourable gentleman at an humble distance. But, if nothing will serve him but the extending it to those bipeds with gowns and wigs, instead of feathers, whom I had almost called v——n, which would have been as bad as *refuse*, — to those whose every-day occupation is depredation, and every-day-employed instrument a lie, — here I feel it impossible to go on with him. Were it my good fortune to be honoured with his confidence, I would beg him to stop where he is, and not suffer a hand admired (and vainly endeavoured to be made ridiculous) for its beneficence, to be converted into a cat's-paw: let those (I would say to him) let those who are to eat the chesnut, put paws upon pates, and beg for it.

Let me not be mistaken. When I had like to have said v——n, what I had in view were fee-fed judges: the only sort, alas! which Matchless Constitution has yet bred: men, to whom, and so much more than to the man of finance, we are indebted for the so little less than universal denial of justice. If, instead of adding, he would substitute salaries to fees, I would consent to shut my eyes against the amount, howsoever extravagant it might prove.

The fees to be compounded for would have been—not only the fees avowedly extorted, but the unhappily so much more abundant stock surreptitiously received: received by these so erroneously supposed uncorrupt hands. They would be — not only the fees exacted by superintendents in their own name, but all those exacted under their authority, by respective subordinate holders of offices, of which they have the patronage. For, who is there that does not know that an office in a man's gift has a no less decided marketable value than an office of the same emolument in his possession? True it is that, compared with the value of the possession, the value of the patronage may be to any amount less: not less true is it, that it may also be, and that it not unfrequently is, fully equal. Let Lord Eldon say, how much less worth to him the many thousands a-year he has put into his son's pocket are, than if it had been his own? Let Mr. Peel, if he feels bold enough, look into the documents, and tell us, in his place, how many those thousands are.

To the number of the offices, the emolument of which a man can pocket with his own hand, there are limits: to the number of the offices, the emoluments of which he can thus pocket through other hands, there are no limits; and, in any number of instances, the *protégé's* life may be worth more than the patron's.

Who is there that does not know, that the value of an office to the incumbent is directly as the emolument, and inversely as the labour? Who is there that does not know, that to the patron the value of it is directly as the inaptitude of the *protégé* he has it in his power to put in and keep in it, since the more consummate this inaptitude, the less his choice is narrowed? Who is there, for example, that does not know, that it is to the union of these two characters that spiritual offices in particular are indebted for their transcendent value? Who is there that can deny, that while this mode of payment lasts, interest is, in all judges, at daggers-drawn with duty? — that it is from this cause that suits take up as many years as they need do hours, and as many pounds as they need do pence?

Who is there that can deny, that it is from this cause that our system of judicial procedure is what it is? — and that, through the whole texture of it, — judges having been the manufacturers, — delay, expense, and vexation, having been maximized, for the sake of the profit extractible out of the expense?

Yes: by such hands made, to no other end could it have been directed.

The Chief-Justice of the King's Bench, has he not the nomination to the keepership of the prison named after his judicatory? If so, then to the profits of the bench are added the profits of the tap: and the money which justice would have returned to the hands of the creditor, is extracted, through this channel also, into the pockets of the judge.

Same question as to other chiefships, — whether, as between one and another, consistency in this respect, or inconsistency, is the rule: also of that which is about to be squeezed by jailor out of debtors and creditors, how much is, in advance, squeezed out of him by judge? questions these, none of them

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surely unfit to be put by Mr. Peel before he gives his support to the advocate of innoxious beasts and pre-eminently noxious judges.

Originally, though pregnant with depredation and oppression as it could not but be, payment by fees was matter of necessity: for judicature was necessary before kings had money to pay salaries.

For these three-and-thirty years past, it has been without excuse. The corruption continued, has been continued with open eyes.

When the trade of *trading justices* was put an end to — (this was the name then given to Middlesex magistrates) — it was undoubtedly for this same cause; it was because, in their small way, they made and protracted suits, for the purpose of multiplying fees.

When this small branch of the trade was put an end-to, it was by the selfsame remedy I am now venturing, with how little hope soever, to propose. So far as concerned corruption, success could not be more complete. Salaries were substitutes to fees, and in that form the plague ended.

When fees had thus given place to salaries, what disorder there was took an opposite turn. While the fees flowed into the judicial pocket, there was too much activity; now that, if any come in, they take a different direction, if report is to be believed (see above, p. 336,) there is not enough of it. Lethargic, not excitative, is now the character of the disease. Beyond comparison more mischievous than the lethargic is the excitative, though, when the specific is applied, so much easier to cure.

If in the case of the trading judges called *magistrates*, the remedy was needful, how much more bitterly needful is it not in the case of the trading judges called *judges!* — Look to mischief, profit, temptation, check: Look to the two fields of mischief; take measure of their extent.

Under the *trading justices*, the delay manufactured may be reckoned by *days:* under the *trading judges*, by *years*.

Under the *trading justices*, expense imposed on suitors may be reckoned by *shillings:* under the *trading judges*, by hundreds and by thousands of pounds.

Of the jurisdiction of the trading justices, local field, Middlesex, with or without the now added three other home counties; of the trading judges, England: local field, in both cases, far too irregular for measurement. Chaos bids defiance to the theodolite: what is sufficient is — that in the case of the trading justices, the sum of the scraps is a trifle, compared with what it is in the case of the trading judges.

Under the trading justices, the *profits* of the trade may be reckoned by *hundreds* a-year: under the trading judges, by more than as many *thousands*.

Honourable gentlemen, — will they always be so weak as to believe, or so transparently insincere as to pretend to believe, that while the temptation afforded by the *hundreds* was irresistible, the temptation afforded by the *thousands* was, is, or can ever be, without effect? Mr. Peel, — does he believe this? His noble, learned, and consistent friend, who, if you will believe him, is purity itself, — does *he* believe this?

Honourable gentlemen, — will they always believe, or affect to believe, that it is in the power of a masquerade dress to change man's nature, and that a contagion, which a coat could not resist, has been, and is, resisted by a gown with a strip of fur sewed to it? Mr. Peel, — does he believe this? The noble, learned, and consistent friend, who is faith as well as purity personified, — does he believe this?

So much for mischief — profit — temptation. Now as to *check*, in one sense of the word, *responsibility*.

The trading justices had judges over them: judges, by whom, — if haply, in an extreme case, money could be raised sufficient to buy a hearing for a cry for punishment, — they might be punished: — judges, who, though not fond of punishing any man with a king's commission in his pocket — might thereupon, by fear of shame, be peradventure driven so to do, if the case were flagrant.

The trading justices had judges over them. To any practical purposes, the trading judges have none: head of them all is the Lord Chancellor: head over himself is Lord Eldon: over Lord Eldon in Chancery, Lord Eldon in the House of Lords. Charge him with creation or preservation of abuse — of delay, expense, vexation, uncertainty — motive, either none at all, or the profit upon the expense; — he names the inquisitors by whom the inquisition is to be made. The rehearsal of this farce has been performed. When the curtain comes to be drawn up — if there be hardihood enough to draw it up — will the plaudits of a plundered people welcome it?

Remains still untouched the effective responsibility. Impunity wanted much of being complete in the case of the trading justices: it wanted nothing in the case of the trading judges. Here the word *responsibility* is mockery. Action, none — indictment, none: — pretence of impeachment, a cloak: — consistently with legislation, impeachment is physically impossible. Time would suffice for rendering it so, even if accusers were to be found, and where is the inducement for accomplices to be become — some of them informers, others of them judges?

Thus much for impeachment. Address of both Houses is impeachment under another name.

Trading justices never *made law*. The trading judges have always made it, continue to make it, and, so long as the pretended

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law-makers suffer them — which they find no small convenience in doing — will never cease making it.

Yes: made it they always have, and, above all things, for the sake of the trade. Accuse them — you do so in the teeth of a law made by themselves to punish you for it. The counterfeit and judge-made law is even more effectual than a real one would be: for, on each occasion, it is moulded at pleasure: moulded by those who, having made it for the purpose, execute it.

Were I to see a judge taking a bribe — should I tell of it? Not I, if I had common prudence. The person punished would be — not the judge for taking the bribe, but I for telling of it.

Thus, and hence it is — that, on the part — not only of all judges, but of all whom they delight to favour — including all whom "the king delighteth to honour" — virtue is consummate, character immaculate.

But why talk of imaginary things, such as *bribes*, when by the real things called *fees* — fees made lawful by those who pocket them — the work of corruption — of sure and self-corruption — is carried on; carried on in open day — carried on without fear or shame — in the face of the so long plundered, and, though so often warned, yet still deluded people?

No: never surely was grosser delusion than that by which English judges are exhibited as models of uncorruption. In whatsoever shapes they could practise corruption without danger, they have always practised it: and of this practice, their system of procedure, composed of depredation and denial of justice, has been the fruit. Never (it is said, and truly) never was English judge known to take a bribe. No, verily; for how should he? Bribery requires two: a receiver and a giver. Receiver a man cannot be, without putting himself into the power of the giver. Since Bacon, no English judge has been weak enough to do so; and so there can be no receiver. This is seen by everybody: and so there can be no giver. What, in England, should induce a judge thus to expose himself, when, without exposing himself, he gets more in abundance than, in any other country, judge ever did by anything he could do to expose himself? What should induce him to take, of this or that man, with fear and trembling, money in the shape of a bribe, — when, by money exacted by taxes, levied on all men without distinction, by force of a law made by his predecessors, or perhaps by himself, — he is permitted, under the name of *fees*, to pocket more money than judge ever received elsewhere in the shape of bribes? Give a man whatsoever he would steal from you, you may prevent his stealing it: whatsoever a man desires to exact, give him power to exact it *by* law, you may prevent his exacting it *against* law. Of this sort is the antiseptic, the infallibility of which has received such ample proof in the case of English judges.

As to bribery so called, what is the real preservative against it? Publicity: — that most efficient and sole safeguard, which these incorruptibles ever have been, and even now, with the eye of the public full upon them, never cease labouring to destroy. A judicatory on which life and death depend, is not (if you will believe Judge Bailey) — is not a *court of justice*. Why? because if you will admit this, a certain quantity of nonsense, with the word *prejudging* in it, may suffice for keeping the doors of it closed. Admit this, and you may see the doors of the Westminster Hall judicatories equally closed: — give them this, you may do anything with them: with as little ceremony, they will be ready to give up their own title to the appellation of *courts of justice*. Were they so to do, no contradiction would the position receive from me: all I should object to is, the practical conclusion drawn from it.

With Lord Eldon you will have little difficulty. He has long been working at the change. So frequently open are the doors of his closet, — to shut the door of his hitherto mostly open court, will be, one of these days, a motion of course. They may, however, be thrown open now and then, for occasions of parade: whereupon Bar will be seen arguing, while Court writes dockets, reads letters, or takes a nap.

A kindred and eminently convenient policy is — the giving to chambers of judicature such a size and form, that no *lay-gents* can find entrance. True it is, that by this device, ingenious as it is, the guardian influence of the Public-Opinion tribunal cannot be entirely destroyed; for lawyers cannot be altogether prevented from becoming writers, and betraying the secrets of the court. It may, however, by this means, be in no inconsiderable degree weakened. How much more effectual instruments of this policy brick and mortar are, than rules of court can be, is no secret. All that rules could do, is the rendering admission difficult: properly placed, brick and mortar render it impossible.

English judges incorrupt indeed! Those who talk in this strain, what is it they can mean by it? Did they ever see or hear of a judge who was not completely at the *command* of the corruptor-general? Places for sons, daughters' husbands, nephews, nieces' husbands, friends, and friends' friends — and, to crown all, coronet for self. None of these things are bribes: True, but are they the less irresistible? — are they the less corruptive? But why speak of *command*? Far short of the real strength of the corruption — of the

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corruptive longings, and consequent courtings, and consequent compliances with presumed desires, — comes the view which that word gives of it. From any such superior, to any such subordinate authority, no such explicit expressions of will ought to be, none accordingly ever are, issued. Issued? To what end need they be? In a situation of that sort, is there a judge, is there a man, that needs to be told, what will displease, and what will please? To stand assured with sufficient certainty, not a step need any man stir from his own *home*.

Take, for example, the case of John Hunt. Among the titles of Majesty in this country, is that of *most excellent*. John Hunt, in his *Examiner*, says things which go to impugn that title. Lord Chief-Justice Abbott punishes him for this, with loss of £100 under the name of fine, and £90 under the name of *costs: costs*, of which the honourable house could know at any time, if it chose to know, whether anything, and if anything, how much, directly or indirectly, goes into the pocket of the Chief-Justice.

Now, then, of the thus punished words, wherein consisted the mischief? "Oh," says his Lordship, or somebody for him, "the feelings of the King were hurt by them." Hurt by them? How so? This same hurt — how came his Lordship to be so sure of it? This same Majesty that now is — did he ever tell him of it? — did he bespeak any such punishment? No: the questions answer themselves. To be thus assured, his Lordship had no further to look than into his own learned breast, and there he saw them; for, in that repository of fine feeling, what he could not fail to see clearly enough is, that had it happened to himself to hear a man speak in any such strain of his Lordship's father, he would have been indignant, and not sorry to see the blasphemer punished.

By the king that now is, or by anybody for him, does Lord Chief-Justice Abbott, or Lord Chief-Justice Anybody, need to be told, that obsequiousness to crowns is the road to coronets?

So much for power and glory. Now as to money. If ever there was a judge, on whose incorruptibility the sound of the trumpet was loud, it was the late Lord Camden. His lordship was Lord High Chancellor. His son, on pretence of telling out public money, got out of it an income, which, when he gave it up (a bow upon paper is due to him for it) was worth £27,000 a-year to him. So much for corruptive intercourse, in a case in which it is not bribery. Now for a case in which it would be bribery. Seven-and-twenty guineas in hand, suppose George the Third saying to the Lord Chancellor — "In this suit (naming it) which I have against such an one (naming him) give judgment so and so, and I will give you these seven-and-twenty guineas," — would his lordship have taken it? Oh fie! fie! what a thought! — this would have been no better than bribery. Multiply the twenty-seven by a thousand — multiply the product by so many years as the income lasted, — and, though assuredly nobody said what nobody had any need to hear, all is consummate purity.

So much for motives, and the influence of them on conduct: to know which, for the purpose of legislation, which is the purpose *here* in question, never do I look to anything but *situation*: of individuals I know just nothing, which is just what I want to know. Now as to mischievousness. Of the law thus made, the effect is, and, if it had any, the object was, to establish punishment for everything that can tend to place in an unfavourable light the character of any king that ever lived; while the whole treasury of reward is applied to the purpose of placing those jewels in the most favourable light possible. Probative force of the evidence being in both cases the same, suppression of evidence in favour of one side, is in effect exactly the same thing as forgery of it in favour of the opposite side. Mischievousness of the practice the same in both cases; wickedness of it the same, though the people as yet have not sufficiently learnt to see it.

Keep in force this law, and with a steady hand give execution and effect to it, — the will of Holy Alliance is done, and history, from being the food, is converted into the poison of the mind. Yes, all history. First, as to the supposed injured dead. The protection granted to the manes of the third George, shall it be refused to those of the second, or those of the first? If yes, at what point, if at any, in the line of ancestry, shall it end? Then as to the supposed injured living: if thus wounded by the aspersions cast upon his royal father, can the king that now is be indifferent to any such, or any other aspersion, cast upon his princely grandfather, his royal great-grandfather, or his first ducal, then royal great-great-grandfather, &c. &c.? If not, then up go we to Egbert and to Fergus, and so on, through Woden, to Japhet and to Adam. At which of all these points does royal tranquillity commence? — that degree of tranquillity which will suffice to render truth and history unpunishable?

In this case, by-the-bye, may be seen, as well as in so many hundred other instances, how much more useful *judge-made* law is to parliament itself, — constituted as it is, and looking to the ends which, so constituted, it cannot but look to, — than even its own *parliament-law* could be made. Parliament itself, would it thus dare to destroy the truth of history, and cut up political science by the roots? But innumerable are the things of this sort

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which it does every day by the hands of judges; and which fear or shame would keep it from doing by its own.

These things (unless the last-mentioned one be an exception) being so manifest, and so almost universally acknowledged to be true, that, on account of their notoriety, the very mention of them is tedious, — what less can follow, than that to all purposes to which corruptness is to the greatest extent mischievous, a state of constant corruptedness is the state in which every judge has been that ever sat upon the English bench?

In cases between king and subject, in which the mischief of it consists in giving countenance and increase to depredation and oppression, for the benefit of his monarch, his associates, and dependents, — the disease is incurable: its root is in the form of government. But in suits between subject and subject, in which the mischief consists in giving countenance and increase to depredation and oppression by judges (the present judges at all times excepted, whatever they have been, are, or will be) for the benefit of judges, their associates and dependents, the disorder is not incurable.

A few words more as to the remedy, but for which the disease would not have here been mentioned. The principle has been seen. The public are indebted for it to Lord Colchester. His was the original Middlesex police magistrate act, 32d Geo. III. c. 53, anno 1792. Time enough for amendment, the bill found its way, somehow or other, into my hands. Time for scrutiny I could not afford. My approval was pure and simple. Sheridan opposed it in Honourable House. Objection, increase of patronage — a Whig complaint, never grudged when non-redress is sure: a few words might have dissipated it, but they were words that could not be heard there. Subject of the objection — either the *source* of the delegated power, or the *quantum* of it. Applied to the *source*, the objection (an unanswerable one) went to the form of government; it applied to every part, present and future, of the official establishment; applied to the *quantum*, it supposed a certain quantity of corruption needful: and, as such, requiring to be protected from censure by the word *influence*: all above needless; and, that it might be game for the Whig hunt, licensed to be hallooed at by its proper name. Applied to every future addition to the establishment, the objection sought the exclusion of every good, to the introduction of which, — and the perpetual continuance and increase of every evil, to the diminution of which, — any such addition should be necessary.

No such desire as that of applying a bar to the increase — to the addition of corruption to influence — was really entertained. In Honourable House, the disposition to keep influence within its bounds, whatever they were, had place or it had not. If no, objection to increase was useless: if yes, cancelling an equal quantity of sinecure would afford the same general security, without depriving the public of the benefit of the particular measure.

To return to the true remedy: it was a specific. In the finance committee of 1797 and 1798 — the groundwork of such an economy as the form of government admits of — Lord Colchester applied it, and with success, to some of the administration offices. It stopped there. Judicial corruption was in an ark too sacred to be touched. In both Houses, whatsoever was learned would have been in a state of insurrection. Learned lords were above shame. Ministers were not above fear: so there the reform rested.

Since then the public mind has made some advance: whether sufficient for the substituting of justice to depredation and corruption, time will show.

To return to Mr. Martin and his new *protégés*. By his humanity he got nothing but ridicule: from his liberality he may hope better fortune. No honourable gentleman, who, for self, son, brother, cousin, or friend, has ever refreshed his eyes with a glimpse of the remuneration fund, can consistently harbour a doubt of the insufficiency of it. Whigs form no exception: for, though possession is not theirs at any time, expectancy is at all times. In the maximization of expense, it unites them in interest with judges. With what aspect they behold the county courts bill may be seen without looking at their eyes. Saving to suitors would be robbery to these their protectors, while in the patronage they have no share. Everything they say against it — everything they can seek to clog it with — is a certificate in favour of it. A measure with this object cannot have a stronger one.

By this his liberating scheme, who knows how many supporters he may not have brought over for his humanity scheme? How profound soever their contempt for their betters (for, when educated, as they sometimes are, and always may be, quadrupeds have the virtues without the vices of featherless bipeds) how profound soever their contempt — how complete soever their indifference — men's hatred for these animals, can it, to any considerable extent, be greater than their love for themselves?

As to his instrument of purchase — his announced vermin-gorging bill — he could not have chosen a more promising one. This measure is of the number of those, which even an opposition member may be admitted to carry, and in which success can scarce be dubious. Reasons are ready stationed in each honourable breast. They stand upon a rock; and *calculation* is the name of it. What will my share of the annual charge amount to? A few half-pence a-year — what I toss now and then to a beggar to get rid of him when he is

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troublesome. Thus much on the debtor side: now, *per contra* creditor. So many more thousands a-year for my son, my nephew, my cousin, or though it were but my cousin's cousin, when his time comes, which it can scarce fail to do, for taking his seat in a certain place. For, calculation being settled in the head, then, from hand or lungs, comes the substance of the universally-received economico-mathematical truism — official aptitude is in the direct ratio of ditto remuneration: — a proposition, which, to render it really true, requires nothing but the substituting to the word *direct*, the word *inverse*. Thereupon comes a flower or two, such as the right honourable secretary's rhetoric has just been seen scattering over the subject: — virtue, displayed and appealed to, generosity: dignified virtue displayed, in the penetration manifested, by seeing through the cloud which the word *economy* (pronounced with a shake of the head — "*poor economy!*") had, in the head of vulgar ignorance, thrown over the question. Natural and customary result, — "hear him! hear him!" from all quarters. Is anything ever said on the other side? If yes, it is for form's sake, with a sort of faint, and as if self-condemning tone; nor even this but under the most satisfactory assurance, that the measure will not be hurt by it.

While upon this ground, I cannot pass over altogether an error — for such I am persuaded it is — on the part of Mr. Peel, as to a matter of fact, and which remained unnoticed before, because foreign to the purpose. In England, according to him (No. 8,) judges are worse paid than "in almost any other country in the world." Not that, even if admitted, the fact would serve his purpose: it would run counter to his purpose. For, if not the only incorruptible, English judges (so almost everybody has hitherto been in the habit of saying) are of all in the world the most incorruptible. Well then — this incorruptibility — forasmuch as by what you are paying for it you have got it already, — why pay anything more for it? This question would be unanswerable, were it not for the argument *ad verecundiam:* men, who perform so charmingly, can you be so ungenerous as to let them serve at an under price, when it would be so easy for you to give them a fair price? The argument is worthy of the nursery, and perhaps has been inherited from it. The child is gorged with meat, but spies out cake, and cries for it. "Dear sweet poppet!" says grandmother to mother, "can you be so hard-hearted as to let it cry on, only to save a little bit of cake?"

So much for argument: now for fact. Talking with a Frenchman t'other day on this subject, £50 a-year, he assured me — £50, and no more, is the salary of that class of judges, by which by far the greatest part of the business is done. "Well, but don't they take bribes?"—"No such thing. On the contrary, the country is universally satisfied with them:" just what we have seen the right honourable secretary assuring us of, in the case of the £600 a-year magistrates. The right honourable secretary, having it in charge to find his £600 a-year insufficient, its sufficiency notwithstanding, had somewhat of a bias upon his own mind. According to the right honourable secretary, with these his £600 a-year magistrates the country is universally satisfied. But then, as has been seen, though satisfied, he is at the same time dissatisfied with them: and besides, their aptitude being to be proved as well as disproved, he had something of a bias, though a shifting one, upon his mind. The Frenchman had no such bias. He is himself neither judge, magistrate, nor lawyer; nor patron, with reference to any who are. He is a man of estate, birth, and connexion; and, though all that, a man of information and discernment. It did not occur to me to cross-examine him as to fees: but, as what we were talking about turned upon what was the whole of the emoluments, I cannot but think that if there are fees, they are fees of which neither the magnitude can be increased, nor yet the number extended, otherwise than by the satisfaction afforded by good judicature; and that, if any at all, the £50 does not receive from them any such increase as would affect the argument. I for my part would not give for them another £50.

This, though, if it were anything to the purpose, it might surely serve for inquiry, — is not official: what follows is. Printed "Register of Officers and Agents, &c. prepared at the department of state." Date of Congress Resolution, 27th April, 1816. Printed anno 1818, at Washington, page 18. Judiciary of the United States Supreme Court. Chief Justice, dollars 4000; not so much as pounds 1000. No equity, put above law, to stop and overrule it. Compare this with Lord Eldon's £23,000 a-year (those who make least of it make this) with so many other thousands for his son; not to speak of the thousands a-year salaries of the minor and common-law chiefships, and puisneships, and masterships, besides the ever corruptive fees. Before the words, "*every other country,*" stands indeed, in one of the reports of the right honourable secretary's speech (No. 8,) the limitative word "*almost:*" let any one judge whether it was not a prudential one.

A thing more to be wished than hoped for is — that, in the right honourable secretary's situation, and those associated with it, right honourable gentlemen and noble lords were a little more careful than they sometimes are, when speaking to facts, especially distant and complex ones, such as those in questions like this more especially. By Lord Liverpool, not many years ago, if recollection does not greatly deceive me — by Lord Liverpool it

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was declared and insisted upon, that in this country (population for population he could not but mean) the expense of the official establishment was less than in the United States. Proceeding in this strain, had he entered upon particulars, the King (he would have had to say) costs this country less than the President does the United States. So much for first treasury lord. Right honourable secretary — would he, after speaking upon the particular branch of the expenditure now in hand, as he has done — would he, after parliamentary inquiry into the facts, consent to pay the judicial establishment upon the same scale as it is paid, in that country, in which, to use his own phrase, it is so much less parsimoniously paid than in this? Not he indeed! What is it (he would then turn upon us and ask) what is it to the purpose, what people do in other countries? — in countries in which the state of things is so different from what it is in our own? Is it for us to receive laws from other countries?

In a committee of his own nomination, will he be pleased to elicit the evidence by which the correctness of this assertion of his will be proved? He knows better things. What use, he would ask, is getting up evidence from which nothing is to follow? Lord Liverpool — will he consent to assign, to the whole official establishment, the same rate of remuneration as that which has place in the United States — general government and particular states, always included? To no such insidious proposal would his lordship give acceptance. His love for the people and for economy is too sincere, to suffer him to pledge himself to an innovation, from which the dear people would have nothing to gain and so much to lose.

On pain of ignominy, a helpless radical must maintain, whether he will or no, some caution in regard to his facts: were he to make a slip, he would never hear the last of it. High situation places a man at his ease in regard to facts. As often as occasion requires, he may let fly insinuations or assertions, such as the above, and thenceforward hear no more of them than he pleases. Should any unpleasant use of them be endeavoured to be made, up comes the rule: "No allusion to anything said in a former debate." Good, if responsibility be good for nothing: not so clearly so, if responsibility be good for anything. So far as regards facts, it is a counterpart to that mendacity licence, which, in *Scotch Reform* and elsewhere, has been held up to view as one of the pillars and main instruments of English judicature.

Throughout this examination, I have never been altogether free from feelings of compunction, at the thoughts of the sort of liberty all along taken with the author of the special jury bill. On the present occasion, I found him doing as, in his place, everybody else has done. On that other occasion, I see him taking a course peculiar to himself. Time does not at this moment permit me so much as to read the bill: I cannot therefore, on the ground of any opinion of my own, venture to say a syllable of it. But, if it does but completely substitute, as I am assured it does, *lot* to *packing*, and is in other respects what it has been certified to be by those whose discernment and love of justice I stand assured of, it will, by this one measure, ensure to him a stock of popularity and public confidence, such as I tremble but to think of.*

Should this measure be carried through, he must however content himself, as well as he can, with the reputation of probity: for as for that of consistency, it will quit him, and seek refuge in its chosen seat, the bosom of his noble and learned friend. Consistency being where it is, — how anything of this sort should have found its way into the secretary of state's office, is the mystery of mysteries!

One word more as to patronage. On the present occasion, it is to the lessening the value of it to the honourable secretary that my endeavours, such as they are, have been applying themselves. Yet, so far am I from grudging him any good thing obtainable without preponderant evil to the community — in the case of the county courts bill, no desire a man in his place can have, for feeling the patronage of it is in his own hands, can be more sincere than mine for seeing it there. Supposing the situation equally acceptable to the only class of expectants worth providing for, here is a stock of patronage worth at least three times as much as that other.

County court judges, thirty: salary of each, £800: this gives £24,000 a-year — thrice as much as the £6000.

No hands can I find anywhere, which, in point of aptitude (Matchless Constitution standing as it stands) would bear a thought in comparison of his. Lord lieutenants? — they are so many invisible objects. In the high court of public opinion, nobody will see them — nobody will know who they are. The judge chosen by each will be chosen of the family most connected in the county, which is as much as to say, the most unapt that could be chosen. Armed as he is like any Achilles, still the place of a secretary of state is at the bar of public opinion, and he stands an object to all eyes. Here are mine, for example, weak as they are, yet better perhaps than none, thus watching him: could they keep running after thirty, or I don't know how many more, Lord lieutenants?

Chancellors! — "aye — there's the rub." Sooner than see the patronage in the hands of the model of consistency, or even of any other English fee-fed judge, — sooner, much sooner, would I see it added to the *portefeuille* of the Chancellor of France.

* Vide p. 163 and const. code, ch. ix. § 16.

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SPEECH of Mr. SECRETARY PEEL, *on introducing the Police Magistrates' Salary Increase Bill,* 21*st March* 1825. *Extract reported in the Times and the Morning Chronicle, of the* 22*d* : —

TIMES.

1.

He held in his hand papers, from which, if he chose to enter into any detail, he could prove to the satisfaction of the committee, that since the institution of police magistrates, the business which devolved on those individuals had, owing to various acts of parliament which had been passed, independently of the increase of population, greatly augmented. *Although that circumstance would of itself be a sufficient reason for increasing the salary of the magistrates,* he rested his proposition upon grounds which he hoped the committee would consider even more satisfactory.

2.

When the police magistrates were first appointed, it was the practice to select individuals to fill the office who, he must say, were incompetent to discharge the duties which devolved upon them. He found from the papers which had been laid upon the table, that out of twelve police magistrates appointed at a former period, there were only three barristers; the rest were composed of a major in the army, a starch-maker, three clergymen, a Glasgow trader, and other persons who, from their occupations, could not but be considered as utterly unqualified to perform the duties of magistrates.

3.

The law had fixed no limitation with respect to the previous education of persons appointed to the office of magistrate, but he thought the committee would be pleased to hear, that a limitation on that point had been *prescribed* by the secretary of state. Neither his predecessor in office (Lord Sidmouth) nor himself had ever appointed a person to fill the office of magistrate who had not been a barrister of three years standing. That was a rule to which, in his opinion, it was *most desirable to adhere.*

4.

But in order to enable the secretary of state to abide by that rule, and to carry it into practice, it was necessary to augment the present salary of police magistrates. He implored the House to consider, whether £600 a-year (the present salary) was sufficient to induce a barrister to give up the emoluments of private practice, and the hope of preferment in his profession, to undertake the duties of a magistrate,

5.

which required their *almost constant attendance?* It could not, he thought, be consi-

MORNING CHRONICLE.

1.

He held papers in his hand, showing in the clearest manner the great *increase* that had taken place in the business of the police offices since their first institution, arising from the great increase of the population of the metropolis, amongst other causes. It appeared from those papers, that since their first establishment, considerable additions had been made to the business of the offices, by various acts of parliament, passed at different times, but he would lay his proposition upon stronger grounds.

2.

In the first instance, the salaries of the magistrates amounted only to £400 per annum; it was afterwards raised to £600; but it was well known, that under the former regulation the persons appointed were totally *incompetent* to the duties. He found, that of the twelve magistrates first appointed, three were barristers. One was a major, three clergymen, two starch-dealers, and one a Glasgow trader.

3.

He thought the committee would be pleased to hear, that though there was no limitation fixed by law to determine the eligibility of the persons to fill such offices, Lord Sidmouth and himself had confined themselves strictly to the appointment of *barristers alone,* and had not nominated any to the office of magistrate who were of less than *three years* standing. He would ask the committee, under those circumstances,

4.

whether £600 a-year could be sufficient to tempt a professional man of *adequate abilities* to relinquish his hopes of rising at the bar?

5.

The duties at the office would require his constant attendance, and the committee, he

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TIMES.

dered an unreasonable proposition, that in future the secretary of state should *be empowered* to give to each police magistrate the sum of £800 per annum.

6.

He hoped that he should *not* be told, that individuals might be found, who would be willing to undertake the magisterial duties for a less sum. It was very true that *such was the case.* He was constantly receiving applications from persons who were anxious to be appointed police magistrates. Those applications proceeded principally from *country magistrates*, who had discharged the duties of *their office ably and satisfactorily;* but whom, nevertheless, he did not think right to appoint to be police magistrates in the metropolis. He held the unpaid magistracy in as high respect as any man, but he could easily conceive that a gentleman might, in consequence of the influence which he derived from local circumstances — the relations of landlord and tenant for instance — be able to discharge the duties of a country magistrate in a satisfactory manner, who would be incompetent to undertake the important ones of a police magistrate.

7.

"Police magistrates" was the name generally given to those magistrates to whom he alluded; but those persons were mistaken who supposed that the duties which they had to perform were merely executive. They were called upon to administer the law in a great number of complicated cases which were submitted to them. Out of some recent acts of parliament some very important questions arose, which the police magistrates were called upon to decide. Several nice cases had occurred under the building act. He knew one case of that description, which had occupied the attention of the magistrates *for a couple of days, during which surveyors had been examined on both sides.* He thought that a salary of £800 a-year was not more than a fair remuneration *for the practice which a barrister must abandon when he undertook the duties of a magistrate.*

8.

It appeared to him, that the individuals appointed to administer justice in this country were more parsimoniously dealt with than in almost any other country in the world. He thought this was poor economy, to give inadequate remuneration to individuals selected to administer justice, whether in the *highest office of judge*, or in the less important but still very important office of *police magistrate.*

9.

He might, he did not doubt, get persons —

CHRONICLE.

thought, would not consider it unreasonable to *empower* the secretary of state to grant them each a salary, not exceeding £800 a-year.

6.

It was true, he might be told that there were many individuals now ready to accept those offices: but though that was certainly the case, they were most of them country *gentlemen*, who had discharged the duty of magistrates in their respective counties; but that was no reason why they should be selected to fill the situation of police magistrates in the metropolis. He respected, as much as any man could, the unpaid magistracy of the country; but it did not follow, that because they were enabled by the weight of their character and influence to perform the ordinary routine duties of county magistrates, they were competent to discharge the more arduous business of the police in this city.

7.

Many acts of parliament had increased the duties of those offices; important questions in civil causes often came before them, and under the building acts they were often obliged to hear the evidence of surveyors on each side, and to determine many points which required a considerable degree of legal knowledge. He would rather rest his proposition on that single statement, than enter into the details contained in the papers which he held in his hands.

8.

It appeared to him, that this country was more parsimonious in its provisions upon the administration of justice than any other, and he was sure that there could not be a worse economy than such saving, either with regard to the highest or to inferior officers.

9.

The great object should be to procure persons qualified to discharge the duties [hear! hear!]

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TIMES.

10.

those persons *who could not succeed in their profession — the refuse of the bar* — to fill the office of police magistrate at a lower salary than he proposed to give — he could save £100 or £200 a-year by such a proceeding, but the public would have cause to lament it.

11.

The present police magistrates were of the highest personal respectability, and performed their duties to the great satisfaction of the country. They were thirty in number, *only four of whom were not barristers.* The right honourable gentleman concluded with moving — "That it is the opinion of the committee, that each justice appointed, or to be appointed, under the act for the more effectual administration of the office of justice of the peace, shall receive a salary not exceeding £800.

CHRONICLE.

10.

To tell them that they might take the *refuse of the bar*, would be to recommend a course which the public would soon have reason to lament. Upon those grounds he trusted that the committee would not consider the addition of £200 a-year to their present salaries too much to remunerate them for the services of the police magistrates.

11.

They were acquainted with the character of the individuals who filled those offices at present. *Their knowledge, experience, and respectability, were unquestionable.* They were thirty in number, and their services had already proved the importance of the duties they had to fulfil. The honourable gentleman concluded with moving a resolution — "That each of the justices appointed, or to be appointed, to the police offices of the metropolis, shall be allowed a salary not exceeding £800 a-year, to be paid by one of his Majesty's principal secretaries of state."

PAPER VIII.

INDICATIONS RESPECTING LORD ELDON,

INCLUDING

HISTORY OF THE PENDING JUDGES'-SALARY-RAISING MEASURE.

ORIGINALLY PUBLISHED IN 1825.

SECTION I.

FACTS SUSPECTED.* SUBJECTS OF INQUIRY FOR THE HOUSE OF COMMONS.

RESPECTING Lord Eldon, certain suspicions have arisen. The object of these pages is — to cause inquiry to be made, if possible, by the competent authority, whether there be any ground—and if yes, what—for these suspicions.

In general terms, they may be thus expressed: —

1. That, finding the practice of the court of Chancery replete with fraud and extortion, Lord Eldon, on or soon after his coming into office as chancellor, formed and began to execute a plan for the screwing it up, for his own benefit, to the highest possible pitch; to wit, by assuming and exercising a power of taxation, and for that purpose setting his own authority above that of parliament; which plan he has all along steadily pursued; and, if not, the present *Judges' Salary-raising Measure*, 69, anno 1822, a late act, to wit, the 3d Geo. IV. cap. 6, is the consummation of it.

2. That, it being necessary that, for this purpose, the other Westminster Hall chiefs should be let into a participation of such sinister profit — to wit, as well for the better

* *Objection* — Among these so styled *facts*, are matters of *law*. *Answer* — The existence or supposed existence of a matter of law, is matter also of fact.

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assurance of their support, as because the power of appointing to those offices being virtually in his hands, whatever is profit to them is so to him — the means employed by him tended to that effect also, and have been followed by it.

In relation to the whole scheme, conception may perhaps receive help, from a glance, in this place, at the titles of the ensuing sections. Here they are: —

§ 2. Under Lord Eldon, equity an instrument of fraud and extortion — samples of it.

§ 3. Anno 1807.—Order by Chancellor and Master of the Rolls, augmenting the fees of offices in the gift of one of them.

§ 4. Profit to subordinates was profit to principals: so, in course, to successors.

§ 5. Contrary to law was this order.

§ 6. By it, increase and sanction were given to extortion.

§ 7. So, to corruption.

§ 8. How Lord Eldon pronounced the exaction contrary to law, all the while continuing it.

§ 9. How the Chancellor had laid the ground for the more effectual corruption of himself and the other chiefs (anno 1801).

§ 10. How the project was stopped by a solicitor, till set a-going again, as per § 3.

§ 11. How the other chiefs were corrupted accordingly.

§ 12. How the illegality got wind, and how Felix trembled.

§ 13. How the Chancellor went to parliament, and got the corruption established.

§ 14. How the Head of the Law, seeing *swindling* at work, stept in and took his profit out of it.

§ 15. How King George's judges improved upon the precedent set by King Charles's in the case of *ship-money*.

§ 16. How to be consistent, and complete the application of the self-paying principle.

§ 17. How Lord Eldon planned and established, by act of parliament, a joint stock company, composed of Westminster Hall chiefs, and other dishonest men of all classes.

§ 18. How the King's Chancellor exercised a dispensing power.

§ 19. Character evidence.

SECTION II.

UNDER LORD ELDON, EQUITY AN INSTRUMENT OF FRAUD AND EXTORTION. SAMPLES: —

A SINGLE sample will serve to show in what state Lord Eldon found this branch of practice, and that it stood not in much need of improvement at his hands: by a few more which follow, a faint, yet for this purpose a sufficient idea, will be given of the improvement it has actually received under his care.

By the command of a father, I entered into the profession, and, in the year 1772 or thereabouts, was called to the bar. Not long after, having drawn a bill in equity, I had to defend it against exceptions before a Master in Chancery. "We shall have to attend on such a day," (said the solicitor to me, naming a day a week or more distant;) "warrants for our attendance will be taken out for two intervening days, but it is not customary to attend before the third." What I learnt afterwards was — that though no attendance more than *one* was ever bestowed, *three* were on every occasion regularly charged for; for each of the two falsely pretended attendances, the client being, by the solicitor, charged with a fee for himself, as also with a fee of 6s. 8d. paid by him to the Master: the consequence was — that for every actual attendance, the Master, instead of 6s. 8d., received £1, and that, even if inclined, no solicitor durst omit taking out the three warrants instead of one, for fear of the not-to-be-hazarded displeasure of that subordinate judge and his superiors. True it is, the solicitor is not under any *obligation* thus to charge his client for work not done. He is however sure of *indemnity* in doing so: it is accordingly done of course. Thus exquisitely cemented is the union of sinister interests.* So far as regards attendances of the functionaries here mentioned, thus is the expense tripled; so, for the sake of the profit on the expense, the delay likewise. And I have been assured by professional men now in practice, that on no occasion, for no purpose, is any Master's attendance ever obtained without taking out three warrants at the least.

So much for the state of the practice before Lord Eldon's first chancellorship: now for the state of it under his Lordship's auspices.

Within the course of this current year, disclosures have been made in various pamphlets. One of the most instructive is the one entitled "A Letter to Samuel Compton Cox, Esq. one of the Masters of the Court of Chancery, respecting the Practice of that court, with suggestions for its alteration. By a Barrister. London, 1824." Extracted from it are the following alleged samples: samples of the improvements made in the arts and sciences of fraud and extortion, by Masters in Chancery and others, under the noble and

* Of the result of the above-mentioned experience, intimation may be seen in the *Théorie des Peines et des Récompenses*, first published in French, anno 1811, or in B. I, ch. 8, of the *Rationale of Reward*, just published, being the English of what regards *Reward* in French.

These things, and others of the same complexion, in such immense abundance, determined me to quit the profession; and, as soon as I could obtain my father's permission, I did so: I found it more to my taste to endeavour, as I have been doing ever since, to put an end to them, than to profit by them.

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learned lord's so assiduously fostering and protecting care.

I. *In regard to attendances on and by Masters, money exacted by them as above, when no such services are performed.*

P. 12. "The issuing of warrants is another subject which requires consideration. These are issued frequently upon states of facts, abstracts of titles, charges and discharges, &c. *not according to the time consumed* in going through the business before the Master, *or his clerk*,* but according to the *length of the statement*. The clerk *takes it for granted*, that the investigation of a state of facts of a given length may be *expected* to occupy a given number of hours. The solicitor, therefore, in drawing such his bill of costs, *after the statement has been gone through*, leaves a blank for the number of warrants "to proceed on the state of facts." *The Master's clerk fills up the blank*, by inserting such a number as *might*, *if* there had been much contention between the different parties, have by *possibility* been issued. Thus, where *two* or *three* are all that, in fact, have been taken out, *ten* or *fifteen* are charged and allowed. The solicitor produces those he has *actually received* in the course of the business, and *the clerk* delivers to him so many *more* as are necessary to make up the requisite number.†

P. 12. "A similar process takes place with respect to *the report*. If the charge for the warrants alone were all that was to be complained of, the mischief would not be so great. But *you are aware, sir*,‡ that an attendance on each of these warrants is charged for and allowed, and that frequently by several different solicitors,‖ so that the expense to the suitors is grievously increased."

II. *Of the sinister profit made by the solicitor, the greater part has for its cause the rapacity of the Master, supported by the Chancellor.*

P. 9. "Copies of proceedings of all sorts, of states of facts, of affidavits, of reports, of every paper in short which is brought into the office, are multiplied without the least necessity; and, in many instances, are *charged for, though never made*. For instance, in an amicable suit, where the only object is to obtain the opinion of the court on some doubtful point, and the Master's report is previously necessary to ascertain the facts of the case clearly, each solicitor concerned is required, in most instances, to take, or at least to pay for, a copy of the state of facts carried in, of the affidavits in support of it, and of the draft of the report; and in the event of his not taking these copies, he is not allowed to charge for any of his attendances in the Master's office."

P. 10. "The draft of the report is kept, with the other papers relating to the suit, in the Master's office; and to such a length is the system of charging for copies carried, that in amicable suits it not unfrequently happens, I believe, that no copy whatever of the draft-report is made, but the solicitor merely looks over the original draft in the Master's office. Yet, even in this case, two or more copies will be charged for* as made for the plaintiff and defendants." pp. 10, 11.

III. *How, by breach of duty as to attendance on the part of Masters and their clerks, delay and expense are manufactured by them, and profit out of it, over and above what is exacted by them on mendacious grounds, as above.*

P. 15. "The Masters seldom, I believe, make their appearance in Southampton-buildings before *eleven*, and are mostly to be seen on their way home by *three* o'clock at the latest."

P. 16. "Another evil is that of issuing warrants to different parties to attend at the same hour."

"With some exceptions," says another pamphlet, with a high and responsible name to it, p. 32, "I find a general understanding prevails, that the *earliest* appointment for a Master must be *eleven*, and the *latest* at *two* o'clock." Consequence — warrant sent for; frequent answer— 'Master full for a week.' Page 31—'Court sits from ten to four.' So far the authority. Court, sitting as yet in public, cannot convert *itself* into a sinecurist: this accommodation it cannot afford to any but its feudatories, who, so long as they act, the shorter the proportion of time in a day they sit on each cause, have the greater number of attendances to be paid for.

The attendance styled *the Master's*, is, after

* Of the business charged for, as if done by the Master, the greater part, Masters taken together, is done by the Master's clerk. The officers styled Six-clerks have long ascended into the Epicurean heaven, the region of sinecures: the Masters are jogging on in the road to it. I have known instances of masterships given to common lawyers, to whom the practice of the court was as completely unknown as anything could be.

† Thus exacting, for the Master, payment for that same number of attendances not bestowed; and as to solicitors, not only allowing but forcing them, on both sides — and there may be any number on each side — to receive payment, each of them, for the same number of attendances on his part.

‡ Thus saith the nameless barrister to the Master, who has taken care all this while to know no more of the matter than Lord Eldon does. He is one of the thirteen commissioners, commissioned by Lord Eldon, to inquire, along with Lord Eldon, into the conduct of Lord Eldon.

‖ Though no cause has more than two sides — the plaintiff's and the defendant's — yet on each side there may be as many different solicitors as there are different parties, and to the number of them there is no limit.

* By, and for the profit of, the Master.

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all, in many instances, only the *Clerk's*: so that it may be matter of calculation at the end of what period, under the cherishing care of Lord Eldon, all masterships may have ripened into sinecures, and thus completed the course completed already by the six-clerkships. Per pamphlet, entitled Rewards, &c. page 49, of which presently. Average emolument of one of the Master's *clerks*, in 1822, 1823, and 1824, £2300 a-year.

IV. *Strict community of sinister interest between the judicial and professional lawyers; the judicial principals, the professional, forced accomplices.*

P. 13. "Their bills will be less rigidly examined. Under these circumstances, it is not the interest of a solicitor to quarrel with the Master's clerk."* Both are alike gainers by the existing system.—P. 14. "In cases where the costs come out of a fund in court, *much less strictness* is likely to prevail. If the plaintiff's solicitor be allowed for attendances on more warrants than are actually taken out during the progress of the business, a similar allowance must be made to the defendant's solicitor. But even if it were both the interest and the inclination of the solicitor to amend this practice, it is not in his power so to do. He might indeed amend it so far as his own charges go, but no farther. Over those of the Master's clerks he has no controul; and he is moreover at the mercy of the clerk. If he quarrels with the clerk, he must expect to be thwarted and delayed in every suit which comes into that office, and to have his bills rigorously taxed. The master's clerk, with the assistance of a clerk in court, taxes the solicitor's bill; but there is nobody to tax the Master's bill."

V. *Corruption and extortion, by bribes given to and received by Master's clerks, in addition to the sinister profit, carried as above to the account of the Master.*

P. 13. "The gratuities at present allowed to the Master's clerks ought to be done away with altogether .... Solicitors who are in the habit of giving large gratuities to the clerks, will at any rate be looked upon favourably. Their business will be readily attended to, and oftentimes to the delay of others, who, in strictness, are entitled to priority."

VI. *Anno* 1814, *Lord Eldon's eyes, forced to open themselves to fraud and extortion in one portentously scandalous instance, kept shut in all other instances, before and since.*

P. 11. "With regard to copies of particulars of sale, where an estate is sold in the Master's office, a material alteration has of late years been made. To such a height had these charges amounted, that in one instance (Casamajor *v.* Strode) £700 were claimed for *compensation-money*, in lieu of *written* copies of *particulars of sale*. In consequence of that charge, the *general order of 24th March* 1814 was made, by which the Master is allowed sixpence a side for so many printed copies of the particulars as there are *actual* bidders, *and no more*. There seems no good reason for making even this allowance. It would be fair enough, *if the Masters are to continue to be paid by fees*, to allow the expense of copying the particular for the printer, and even a fee, if thought necessary, for settling it; but beyond that, as there is no actual trouble, there should be no charge on the suitor." p. 12.

Of the particulars above given, a general confirmation may be deduced from the contents of the (I now see) *named*, but not promiscuously published pamphlet, above alluded to—Mr. Vizard's.

What is above is a small sample of that which is said to have place. Of what follows in sections 4, 8, and 9, the design is—to show how that which has place came, and comes, to have place.

SECTION III.

ANNO 1807.—ORDER BY CHANCELLOR AND MASTER OF THE ROLLS, AUGMENTING THE FEES OF OFFICES IN THE GIFT OF ONE OF THEM.

It consists of a printed pamphlet of 25 pages, bearing in the title-page the words following:—

"List of Costs in Chancery, regarding Solicitors, and also Clerks in Court, as increased by orders of Court, dated 26th February last; issued under the joint signatures of the Right Honourable the Lord Chancellor, and Master of the Rolls: being exact copies of those Orders. The same having been collated with the original Lists of the Court.

"London: printed for Heraud and Co., law stationers, Carey Street, corner of Bell Yard, by J. & W. Smith, King Street, Seven Dials, 1807."

In the preamble to that part which regards the "clerks in court fees," the order speaks of itself as establishing "a schedule of—increased fees." Thereupon follows the schedule, and the number of the fees is forty-three.

Anno 1814. In pursuance of certain orders of the House of Commons, returns were made, amongst other chancery offices, from that of

* "Since writing the above, I have been informed that in *one* office,[a] the clerk is not allowed to receive gratuities, but is paid a stipulated salary: and I understand that the business of that office is conducted as well, as expeditiously, and as satisfactorily in all respects, as in other offices. It might seem invidious to say more so."—*Barrister.*

[a] Worth knowing it surely would be by the House of Commons, what that *one* office is.—J. B.

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the *Six-clerks*, and another from that of the *sworn and waiting clerks*. These are comprised in pages 5, 6, 7, 8, of a paper entitled "Fees in Courts of Justice." Dates of order for printing, 13th May and 11th July 1814. Nos. 234 and 250.

In the return relative to the sworn clerks, are reprinted the contents of the pamphlet above mentioned.

SECTION IV.

PROFIT TO SUBORDINATES WAS PROFIT TO SUPERIORS; SO, IN COURSE, TO SUCCESSORS.

HERE begins the proof of the fact — that a twopenny loaf costs twopence: in Honourable and Right Honourable House, the proof will be insufficient; in any other, unless it were a right honourable one, it would be superfluous: for information, yes: but for reminiscence, it may have its use.

1. Wherever an office has any money value so has the patronage of it. By the patronage, understand the power of determining the individuals by whom, together, or one after another, it shall be possessed; — the whole power, or any share in it.

Take any office singly, compared with the value of the possession, that of the patronage may be less or greater. It is most commonly less; but it may be many times greater. Patron (say) a father near the grave; son, in early youth: value of the office if occupied by the father, not one year's purchase; if by the son, a dozen years or more.

Present income of a Six-clerkship, about £1000 a-year: so stated to me by gentlemen belonging to the office. It is regarded as a sinecure; — patron, the Master of the Rolls. One of these judges was Sir Thomas Sewell: children, numerous. No further provision for this one, without injustice to others. Suppose it sold, what would it have been worth to him? Not a fifth of what it was by being given. £2000 the price usually got by patron. So at least said by gentlemen belonging to the office. This for the information of Mr. Robinson — the Mr. Robinson who, as far as I understand hitherto, to secure purity, interdicts sale, leaving gift as he found it.

Say *patron* and *grandpatron*, as you say *son* and *grandson*. Grand patronage is not so valuable as patronage, True: nor yet valueless. In the King's Bench, is an office called the clerkship of the rules. Annual value, as per finance reports, 1797-8, £2767. Nominal joint patrons in those days, Earl of Stormont and Mr. Way; grandpatron, Earl of Mansfield, Lord Chief-Justice. Trustee for the Lord Chief-Justice, said Earl of Stormont and Mr Way: price paid £7000: — circumstances led me to the knowledge of it. But for grandpatron's cowardice that cowardice which is matter of history) more might have been got for it. That or thereabouts was got for it a second time.

Would you know the money value of an office, exclusive of the emolument in possession? To the aggregate value of the patronage belonging to it, add that of the grandpatronage. Nor is that of great-grandpatronage nothing. Wherever you can see a grandpatron other than the king, seeing the king, you see a great-grandpatron.

A Mastership was a fortune to a daughter of Lord Erskine. Had he held the seals long enough, a Six-clerkship might have been a provision for a son, supposing the matter settled with Sir William Grant, who had no issue.

If either patronage, grandpatronage, or great-grandpatronage of the office are valueless, so is the possession of it.

In case of abuse, profit to individuals is one thing; mischief to the public, another. Profit from fee-gathering offices may be made either by sale or by gift. When by sale, small is the mischief in comparison of what it is when by gift. But this belongs to another head.

Neither by the Chancellor, nor by the Master of the Rolls (it may be said) are nominated any of the officers to whose fees the order gives increase. True: nor by this is the additional value, given by it to the patronage, lessened. Along with the values of the sworn-clerkship and the waiting-clerkship, rises that of the six-clerkship. *Tenpence* per folio is paid to sworn and waiting clerks; *tenpence* per *ninety words*, called a *folio*, for copies taken by them: out of each such tenpence, the six clerks, for doing nothing, receive fourpence. This is all they receive: an *all* which to some eyes may not appear much too little.

The measure was one of experiment: direct object, that project of plunderage, which will be seen continued and extended by the hands of Lord Eldon in 1807, and sanctioned by parliament in 1822: collateral, or subsidiary object on his part, giving additional strength to the dominion of judge-made over parliament-made law. Full butt did this order run against a special statute, made for remedy against this very abuse: not to speak of the general principle laid down, and thus vainly endeavoured to be established, by the petition of rights. But as to this, see next section.

Of the price the public was made to pay for this sinister profit, not more than half has, as yet, been brought to view. The other half went to stop mouths. Waste, all of it, as well as productive of correspondent delay, is what is exacted for all three sorts of clerks. Thus felt, and even yet say, the solicitors. The plunderable fund is composed of the aggregate property of all those who can afford to buy a chance for the article sold under the name of equity. The greater the quantity

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taken by the one set, the less is left for the other — see an experience of this shown in § 13. Preceded accordingly by the bonuses given to these more immediate cointeressees of the chancellor and his feudatory, was a like bonus given to the fraternity of solicitors.

SECTION V.

CONTRARY TO LAW WAS THE ORDER.

Not to speak of clauses of *common*, that is to say, *imaginary law*, called *principles*, borrowed or made by each disputant for the purpose of the dispute — full butt does the order run against indisputable *acts of parliament;* — acts of general application applying to taxation in any mode without consent of parliament; — acts of particular application, applying to taxation in this particular mode: —

1. First comes the *generally*-applying act, 25 Ed. I. c. 7, anno 1297—"We have granted for us and our heirs, as well to archbishops . . . . as to earls . . . . and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor aprises, but by the common assent of the realm."

2. Next comes 34 Ed. I. stat. 4, c. 1, anno 1306 — "No tallage or aid shall be taken or levied by us, or our heirs, in our realm, without the good-will and assent of archbishops, bishops, lords, barons, knights, burgesses, and other freemen of the land."

3. Now comes the *specially*-applying act, 20 Ed. III. c. 1, anno 1346—"First, we have commanded," says the statute, "all our justices to be sworn, that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor. And we have ordained and caused our said justices to be sworn, that they shall not from henceforth, as long as they shall be in the office of justice, take fee nor robe of any man but of ourself, and that they shall take no gift nor reward, by themselves nor by others privily or apertly, of any man that hath to do before them by any way, *except meat and drink, and that of small value.*"*

4. Lastly comes the all-comprehensively-applying clause in the act commonly called the Petition of Rights, 3, Ch. I., c. 1, § 20— "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament."

Turn back now to the judge-made law, and the enactors of it. Could they have had any doubt as to the illegality of what they were doing? Not unless these sages of the law had forgot the A, B, C of it.

But a pretence is made, — and what is it? "Whereas the same" (speaking of the fees of the offices in question) "have been at different times regulated by the orders of this court, as occasion required."

The "different times," — what are they? They are the *one* time, at which, by a like joint order, anno 1743, 17 Geo. II., Lord Chancellor Hardwicke, his Master of the Rolls, Fortescue, "did order and direct that the sworn-clerks and waiting-clerks do not demand or take any greater fees or reward for the business done or to be done by them in the six-clerks' office, than the fees and rewards following:" whereupon comes a list of them.†

In any of the many reigns in which parliament never sat but to give money, and in which, could kings have kept within bounds, there would have been an end of parliaments, — as the value of money sunk, augmentation of subordinates' fees by superiors might have had something of an excuse. But Lord Hardwicke — while he was scheming this order, he

* The exception — *the meat and drink of small value* (need it be said?) speaks the simplicity of the times: roads bad, inns scantily scattered, judges in their progresses in the suite of the monarch, starved, if not kept alive by the hospitality of some one or other, who, in some way or other, "*had to do before them.*"

A few words to obviate cavil.

Objection — Immediately before this last-mentioned clause in the statute, runs a sort of special preamble, in these words: — "To the intent that our justices should do every right to all people, in the manner aforesaid, without more favour showing to one than to another." Well then: fee, the same to all, shows no such favour.

Answer—1. Preamble limits not enacting part: — a rule too generally recognised to need reference; disallow it, the whole mass of statute-law is shaken to pieces.

2. Fee the same to all, *does* show such favour in the extreme. A. has less than £10 a-year to live on: B. more than £100,000 a-year: on A. a 5*s.* fee is more than ten thousand times as heavy as on B. Of the B.'s there are several: of the A.'s several millions. By the aggregate of the fees exacted on the plaintiff's side, all who cannot afford to pay it are placed in a state of outlawry: in a still worse state those who, having paid a certain part of the way, can pay no further. Ditto on defendant's side, sells to every man who, in the character of plaintiff, is able and willing to buy it, an unlimited power of plundering and oppressing every man who cannot spend as much in law as he can.

† House of Commons paper, 1814, intituled, "Fees in Courts of Justice," p. 5. — Returns to orders of the Honourable House of Commons, of 31st March and 2d of May 1814: for "A Return of any increase of rate of the fees, demanded and received in the several superior *Courts of Justice*, civil or ecclesiastical, in the *United Kingdom*, by the judges and officers of such courts, during twenty years, on the several proceedings in the same, together with a statement of the authority under which such increase has taken place."

1. England—2. Scotland—3. Ireland—234 and 250. — Ordered by the House of Commons to be printed, 13th May and 11th July 1814.

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was receiving, in the House of Lords, money-bills in profusion, brought up by the House of Commons. This tax of his — would the Commons have given, or would they have refused, their sanction to it? Under either supposition, this tax of his imposition was without excuse.

Well, and suppose that Chancellor and his Master of the Rolls *had* done what Lord Chancellor Erskine and his Mentor did, — "*order and direct* that the said schedule of fees be adopted?" (p. 18.) But they did no such thing: they were too wary: the time was not ripe for it. George the Second had a Pretender to keep him in check: George the Third had none. True it is, that by their adroitly-worded *prohibition*, all the effect of *allowance* was produced. But, had anything been said about the order, *there* were the *terms* of it: — all that these models of incorruption had in view by it was *repression: allowance* was what it was converted into, by underlings acting out of sight of superiors. Thus, on a ground of rapacity, was laid an appropriate varnish — a coating of severe and self-denying justice.

The caricature-shops used to exhibit divers progresses: progress of a *Scotchman*, progress of a *parson*, and some others. In these pages may be seen that of a *fee-gathering judge*. Seen already has been the first stage of it.

If Lord Erskine, or rather the unfledged equity-man's Mentor, had any doubts of the illegality of what they were doing, no such doubts had Lord Eldon: for now comes another motion in the gymnastics of lawyer-craft — the last stage, or thereabouts, which for the moment we must anticipate.

The last stage in the progress is that which is exhibited in and by that which will be seen to be *his* act — the act of 1822 — 3 Geo. IV. c. 69, as per § 13 of these pages: the assumption, per force, recognised to be *illegal;* because, as will also be seen, the court of King's Bench had just been forced to declare as much: whereupon came the necessity of going, after all, to parliament: *illegality* recognised, but a different word, the word *effectually*-employed, that from all who were not in the secret, the evil consciousness might be kept hid. "Whereas," says the preamble, "it is *expedient* that some provision should be made for the permanent regulations and establishment of the fees of the officers, clerks, and ministers of justice of the several courts of Chancery, King's Bench, Common Pleas, Exchequer, and Exchequer Chamber, at Westminster, and of the clerks and other officers of the judges of the same courts; but the same cannot be *effectually* done but by the authority of parliament" . . . . thereupon comes the first enactment, enabling judges to deny and sell justice for their own profit, and giving legality and permanence (and, by the blessing of God, Mr. Justice Bailey, and Mr. Justice Park! eternity) to the things of which we have been seeing samples.

As to the *effectuality* of the thing, what had been done in this way without parliament and against parliament, had been but *too effectually* done; and, but for the so lately disclosed *illegality*, might and would have continued to be done, as long as Matchless Constitution held together. At the same time, what is insinuated is — that, although what *had* thus been done without parliament, *had* hitherto and all along been done *legally*, yet, for want of some *machinery*, which could not be supplied but by parliament, it could not *in future* be so effectually done, as it would be with the help of such machinery, which, accordingly, the act was made to supply. Not an atom of any such subsidiary matter is there in the act. All that this act of Lord Eldon's does, is to authorize and require himself, and the other judges in question — the Westminster-Hall chiefs — to do as it had found them doing: taxing the injured — taxing them on pain of outlawry — taxing the people, and putting the money into their own pockets. In § 13, the reader will see whether what is here said of the absence of all machinery is not strictly true. Nothing whatever, besides what is here mentioned, does the act so much as aim at.

SECTION VI.

BY IT, INCREASE AND SANCTION WERE GIVEN TO EXTORTION.

THE illegality of the order supposed, taking money by colour of it, is *extortion;* — either *that* is, or nothing is.

Ask Mr. Serjeant Hawkins else. As good common law as Mr. Anybody else, or even my Lord Anybody else, makes, is that made by Mr. Serjeant Hawkins; so says everybody. Look to ditto's Pleas of the Crown, vol. ii. b. i. ch. 68, § 1. In the margin especially, if you take Leach's edition, or any subsequent one, you will see a rich embroidery of references: if the ground does not suit you, go to the embroidery, and hard indeed is your fortune, if you do not find something or other that will suit you better.

"It is said," says he, "that extortion, in a *large* sense, signifies any *oppression* under colour of right; but that, in a *strict* sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due." So much for the learned manufacturer. For the present purpose, the *strict* sense, you will see, is quite sufficient: as for the *large* sense, this is the sense you must take the word in, if what you want is nonsense. If you do, go on with the book,

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and there you will find enough of it; and that too without need of hunting on through the references; for if, with the law-making serjeant, you want to enlarge *extortion* into oppression, you must strike out of *extortion* the first syllable, and, with it, half the sense of the word; which done, you will have tortion — which will give you, if not the exact synonyme of oppression, something very little wide of it; and here, by the bye, you have a sample of the sort of stuff on which hang life and death under *common law*.

SECTION VII.

SO, TO CORRUPTION.

CORRUPTION? No: no such head has the learned aforesaid manufacturer and wholesale dealer in crown-law. No matter: he has *bribery*. Rambling over that field, he picks up *corruption*, which he takes for the same thing. Had he lived in present times, well would he have known the difference. Bribery is what no judge practises: would you know what prevents him, see "Observations on the Magistrates' Salary-raising Bill:" Corruption — self-corruption — is what, as you may see there and here, every Westminster-Hall chief judge has been in use to practise; and is now, by act of parliament, anno 1822, 3 Geo. IV. c. 69, allowed to practise.

For bribery, too, Hawkins has his *strict* sense, and his *large* sense. It is in its *large* sense that he fancies it the same thing with *corruption*. Neither to bribery, however, nor to corruption, does this law of his apply itself, in any other case than that in which he who commits it has something or other to do with the administration of justice.* But, as before, this is all that is wanted here.

"Bribery," says he, "in a *strict* sense, is taken for a great *misprision* of one in a judicial place, taking any valuable thing whatsoever, *except meat and drink of small value*,† of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only.

"§ 2. But bribery in a *large* sense," continues he, "is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the *known rules of honesty and integrity*; for the *law abhors* [inuendo the common law, that is to say, it makes the judges abhor] *any the least tendency to corruption, in those who are any way concerned in its administration*."

Here the learned serjeant waxes stronger and stronger in sentimentality, as he ascends into the heaven of hypocrisy, where he remains during the whole of that and the next long section. "Abhor corruption!" Oh yes, even as a dog does carrion.

Be this as it may, note with how hot a burning iron he stamps bribery and corruption on the foreheads of such a host of sages: — of Lord Erskine (oh fie! isn't he dead?) — Sir William Grant (oh fie! was he not an able judge?) — and Lord Eldon, the Lord of Lords, with his *cæteras* the inferior chiefs.

SECTION VIII.

HOW LORD ELDON PRONOUNCED THE EXACTION CONTRARY TO LAW — ALL THE WHILE CONTINUING IT.

THE following is the tenor of a note obtained from an eminent barrister present, who had particular means and motives for being correct as to the facts, and who does not, to this moment, know the use intended to be made of it. In the Court of Exchequer, February 5, 1820: —

"DONNISON *v.* CURRIE.

"A question was made upon a petition, whether certain allowances, made to a solicitor on the taxation of his bill of costs, were regular, which they would have been, if the court of Exchequer adopted in its practice the additional allowances made by Lord Erskine's order, otherwise not.

"It was objected that those additional allowances were not adopted by the Exchequer, inasmuch as Lord Erskine's order was not legal, and that Lord Eldon had intimated an opinion that he did not consider it as legal.

"The Chief Baron (Richards) admitted that he understood *Lord Eldon had said that he did not consider Lord Erskine's order as being legal, but that it had been now so long acted upon, that the court must be considered as having sanctioned it*, and that he (Richards) should follow what had been said by Lord Eldon." Thus far the report.

As to its being for his own benefit, see § 4.

Thirteen years, and no more, having sufficed thus to set bench above parliament, anno 1820, quære, what is the *smallest* length of time that will have become sufficient before the reign of John the Second is at an end?

Objector — Idle fears! how inconsiderable, in all this time, the utmost of what the peo-

* By Lord Chief-Justice Raymond, or by somebody for him, *Bench* law was afterwards made to explain and amend this *Inn of Court* law of the learned serjeant, in addition to judicial law: corruption election bribery was thereby made bribery likewise. See the embroidery as above.

† To Serjeant Hawkins, we see — to Serjeant Hawkins, though he never was a judge — the statute of Edward the Third was not unknown, though so perfectly either unknown or contemned by the host of the under-mentioned judges.

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ple can have suffered from the exercise of this power!

Answer — True, the plunderage has its limit. Thank for it, however — not learned moderation, but a very different circumstance, which will be explained in § 13, when the act by which the last hand was put to the plan comes to be considered: moreover, what makes fees so stickled for in preference to salary, is — that as plunderable matter increases, so will plunderage.

As to its being for his own profit that Lord Eldon thus continued the exaction, see § 4.

Bravo! Lord Chancellor Eldon!—bravo! Lord Chief Baron Richards! "*So long!*" that is to say, just thirteen years: assuming what of course is true — that of the course of illegality begun under Lord Erskine, and pursued under Lord Eldon, the continuation commenced with his re-accession. Years, thirteen! Here then is *one* length of time which suffices to entitle the Westminster chiefs, all or any one of them, to set aside any act or acts of parliament they please: and in particular any act of parliament, the declared object of which is to prevent them from plundering, without stint, all people, who can and will buy of them, what they call *justice*, and from denying it to all who cannot.

But Bar?.... what said Bar to this? Oh! Exchequer is a snug court: small the quantity of Bar that is ever there. But, were there ever so much, Bench cannot raise itself above parliament but it raises Bar along with it. Between Bench and Bar, even without partnership in money or power, sympathy would of itself suffice to make community of sinister interest. The same fungus, which, when green, is made into Bar, is it not, when dry, made into Bench?

No want of Bar was there, anno 1801, when Lord Eldon, as per next section, laid the ground for the decision, thus pronounced anno 1820; as little, when, the next year (1821) as per § 12, ground and all were laid low by the shock of an earthquake. Matchless Constitution (it will be seen) may be turned topsy-turvy, and *lay-gents* know nothing of the matter: Bar looking on, and laughing in its sleeve.

Note here the felicity of Lord Eldon: the profit reaped by him from his *Hegira* of a few months. We shall soon see how, from one of the most unexpectable of all incidents, the grand design of the grand master of delay experienced a delay of six years: a delay, which, like so many of his own making, might never have found an end, but for the short-lived apparent triumph and unquiet reign of the pretenders to the throne. When, upon their expulsion, the legitimates resumed their due omnipotence, it seemed to all who were in the secrets of providence — and neither Mr. Justice Bailey nor Mr. Justice Park, nor any other chaplain of Lord Eldon's, could entertain a doubt of it — that it was only to give safety and success to this grand design of his, that the momentary ascendency of the intruders had been permitted. The Chancellor, by whom the first visible step in the track of execution was taken, being a whig,— not only was a precedent set, and ground thus made for the accommodation of Lord Eldon, but a precedent which the Whigs, as such, stood effectually *estopped* from controverting. Poor Lord Erskine — all that he had had time to do, was to prepare the treat: to prepare it for his more fortunate predecessor and successor. Scarce was the banquet on the table, when up rose from his nap the "giant refreshed," and swept into his wallet this, in addition to all the other sweets of office. As to poor Lord Erskine, over and above his paltry £4000 a-year, nothing was left him, but to sing with Virgil — *Sic vos non nobis mellificatis apes.*

SECTION IX.

HOW THE CHANCELLOR HAD LAID THE GROUND FOR THE MORE EFFECTUAL CORRUPTION OF HIMSELF AND THE OTHER CHIEFS.

For this ground we must, from 1821, go as far back as the year 1801. In the explanation here given of the charges, it seemed necessary to make this departure from the order of time; for, till some conception of the design, and of a certain progress made in the execution of it, had been conveyed, the nature of the ground, so early, and so long ago, laid for it, could not so clearly have been understood.

In nonsense (it will be seen) was this ground laid: plain sense might have been too hazardous. The document in which the design may be seen revealed, is another reported case, and (what is better) one already in print: *Ex-parte Leicester*, *Vesey Junior's Equity Reports*, VI. 429. Buried in huge grim-gribber folios, secrets may be talked in print, and, for any length of time, kept. The language nonsense, the design may be not the less ascertainable and undeniable. Nonsense more egregious was seldom talked, than, on certain occasions, by Oliver Cromwell. Whatever it was to the audience *then*, to us the design is no secret *now*.

Here it follows — that is to say, Lord Eldon's.

Vesey Junior, VI. 429 to 434. Date of the report 1801, Aug. 8. Date of the volume, 1803, p. 432. — LORD CHANCELLOR (p. 432) — "A practice having prevailed, for a series of years, *contrary to* the terms of *an order of the court*, and sometimes *contrary to an act of parliament*, it is more consistent to suppose some ground appeared to former judges,

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upon which *it* might be rendered *consistent with the practice*: and therefore, that it would be better to correct *it* in future, *not in that particular instance*. Upon the question, whether that order is to be altered, or to be acted upon according to its terms, which are at variance with the practice, I am not now *prepared* to deliver a decisive opinion: for this practice having been ever since permitted to grow up as expository of the order, if my opinion was different from what it is as to the policy of the order according to its terms, I must collect, that there is in that practice testimony given, that, according to the terms, it would be an inconvenient order."

No abstract this — no paraphrase — *verba ipsissima*. Eldon this all over. None but himself can be his parallel.

Nothing which it could be of any use to insert, is here omitted. Those who think they could find an interpretation more useful to Lord Eldon by wading through the five or six folio pages of his speech, let them take it in hand, and see what they can make of it. All they will be able to do, is to make darkness still more visible.

SECTION X.

HOW THE DESIGN WAS STOPT SHORT BY A SOLICITOR, TILL SET A-GOING AGAIN, AS ABOVE.

THE deepest-laid designs are sometimes frustrated by the most unexpected accidents. From the hardihood of a man whose place was at his feet, we come now to see a design so magnificent as this of the Chancellor's, experiencing the above-mentioned stoppage of six years.

Before me lies an unfinished work, printed but not published: title, "Observations on Fees in Courts of Justice:" Date to the Preface, Southampton Buildings, 17th November 1822. In that street is the residence of Mr. Lowe, an eminent solicitor. The work fell into my hands without his knowledge. He is guiltless of all communication with me. This said, I shall speak of him as the author without reserve. From that work I collect the following facts. Year and month, as above, may be found material.

1. — Page 20. Early in Lord Eldon's first chancellorship, to wit, anno 1801, his lordship not having then been five months in office, Mr. Lowe, in various forms, stated to his lordship, in public as well as in private, that *in his lordship's court*, "*the corruption of office had become so great, that it was impossible for a solicitor to transact his business with propriety*." This in general terms: adding, at the same time, what, in his view, were particular instances, and praying redress. Note, that to say *in his lordship's court*, was as much as to say *under his lordship's eye*: — *after* such information, at any rate, if not *before*.

2.—Page 20. Argument thereupon by counsel: Mansfield, afterwards Chief-Justice of the Common Pleas; Romilly, afterwards Solicitor-General. On the part of both, assurance of strong conviction that the charge was well founded; proportionable fears, and not dissembled, of the detriment that might ensue to the personal interest of their client from the resentment of the noble and learned judge.

3. — Page 20, 21. Proof exhibited, of the reasonableness of these fears: — "*Judge angry*"....Petitioner "bent beneath a torrent of power and *personal abuse*."

4.—Page 21. Five years after, to wit, anno 1806—Lord Erskine then Chancellor—similar address to his lordship; a brief again given to Romilly (at this time solicitor-general) but with no better fortune: further encouragement this rebuff — further encouragement, to wit, to Lord Eldon, when restored.

3. — Page 21.—In a note, reference to the above-mentioned case, *Ex-parte Leicester*, in Vesey, junior, with quotation of that portion of his lordship's speech, which may be seen above in § 9. Hence a conjecture, that in that same case, Mr. Lowe himself, in some way or other, had a special interest. From the reference so made to that case, and his lordship's speech on the occasion of it, it should seem that the design of it, as above, was not a secret to Mr. Lowe, and that his lordship knew it was not.

Here ends the history of the *stoppage*.

6.—Preface, pp. 6, 7. Upwards of eighteen months antecedently to the above-mentioned 17th November 1822, say accordingly, on or about 17th May 1821, page 6, on the occasion of two causes — Limbrey against Gurr, and Adams against Limbrey, — laid by Mr. Lowe before the Attorney-General of that time, to wit, Sir Robert Gifford, matters showing "that the increasing amount of fees and costs was like *a leprosy rapidly spreading over the body of the law*."

7.—Preface, p. 3. Anno 1821, Trinity vacation — day not stated — to wit, sometime between July and November, mention made of his lordship's courtesy, and of "a promise which his lordship"—(wrath having had twenty years to cool)—"very condescendingly performed." On this occasion, *hearing* before his lordship, Master of the Rolls sitting with him: proof presumptive, not to say conclusive, that, on this occasion, Lord Erskine's order was under consideration; "Controverted" by Mr. Lowe, a fee that had received the confirmation of one of the sets of commissioners, appointed by Lord Eldon for this and those other purposes that everybody knows of.

8.—Preface, p. 5. Anno 1822, Easter term. Observations on the same subject, laid before

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the "Master in Ordinary," meaning doubtless one of the officers ordinarily styled *Masters in Chancery*, ten in number, exclusive of the Grand Master, the Master of the Rolls. With as good a chance of success might the gentleman have laid them before the Master of the Mint.

9.—P. 5. Anno 1822, soon after the above "information and bill" filed against Mr. Lowe, by Mr. Attorney-General, and said to be fully answered. Solicitor to the Treasury, "Mr. Maule." Answer put in by defendant, attachment for contempt in *not* answering. Quere, what means "*information*" and "*bill?*" Information in King's Bench? Bill in Chancery? But what *answer* can an information in King's Bench admit of?

10.—P. 6. Shortly afterwards, Observations laid by him before the lords of the treasury, soliciting the investigation of the charge laid before the Attorney-General (Sir Robert Gifford) *eighteen months before*, on the occasion of the cases of Limbrey and Gurr, &c. as per No. 6.

Containing, as it does, pages between 5 and 6, this same preface is too long for insertion here. Carefully have the above allegations been culled from it. Of the passage contained in the body of the work, the matter is too interesting and instructive to be omitted: it will be found below.

Here then is *one* source, from which, had it ears for corruption, Honourable House might learn at any time, whether, from the above alleged corruption, Lord Eldon has not, during the whole of his two chancellorships, been reaping profit, and whether it was possible so to have been doing without knowing it. By Lord Eldon's present set of nominees, evidence from Mr. Lowe has, I hear, been elicited. Little, if any fruit, I hear, has been obtained from it. No great wonder any such barrenness. Anything unacceptable to their creator they could not be very desirous to receive: nor, perhaps, Mr. Lowe, since the experience had of his lordship's "courtesy," to give.

Astonished all this while at the stoppage—astonished no less than disappointed — must have been the goodly fellowship — the solicitors and clerks in court; importunate for six long years, but not less vain than importunate, had been their endeavours to obtain from Lord Eldon and his Sir William Grant — yea, even from Lord Eldon! — that boon, which with the same Sir William Grant for mediator and advocate, — at the end of six short months, we have seen them obtaining from Lord Erskine: — the said Sir William Grant being, as per § 4, in quality of patron, in partnership with the said clerks in court.*

P. 19. "*An attempt in* 1801 *to reform practice.*"

Whilst Lord Thurlow held the great seal, tables of *fees* taken by *officers in the court of Chancery* remained set up or affixed in their respective offices, and the most trifling gratuity was received with a watchful dubious eye, and cautious hand; but soon after the great seal was resigned by his lordship, those tables began to disappear, and (in 1822) have *never since been renewed:* — gratuities then augmented, until they had no limits: and so early as the year 1801, when increased fees and costs had attained little of the strength and consistency *at which they have since arrived*, the author of these observations stated to the court, "*that the corruption of office had become so great, that it was impossible for a solicitor to transact his business with propriety.*"† To justify such statement, he, by petition, set forth certain payments made, which he insisted ought not to have been demanded or received, and prayed for redress; and he wrote a letter to one of the Lord Chancellor's secretaries, in which he stated an opi-

* Since writing what is in the text, a slight correction has come to hand. Not the whole of John the Second's first reign, only the two last years of it, experienced this disturbance. There was an old sixty-clerk named *Barker*, who was a favourite at court, and had his *entrées*. Cause of favour, this — after pining the exact number of years it cost to take Troy, Mr. Scot, junior, had formed his determination to pine no longer, when providence sent an angel in the shape of Mr. Barker, with the papers of a fat suit and a retaining fee. Him the fellowship constituted for this purpose minister plenipotentiary at the court. Upon an average of the two years, every other day, it was computed, the minister sought, and as regularly obtained, an audience: answer, no less regular — "To-morrow." On this occasion, observation was made of a sort of competition in the arena of frugality between the potentate and his quondam protector, now sunk into his humble friend. Without an extra stock of powder in his hair, never, on a mission of such importance, durst the plenipotentiary approach the presence; consequence, in that article alone, in the course of the two diplomatic years, such an increase of expense, as, though his Excellency was well stricken in years, exceeded, according to the most accurate computation, the aggregate expenditure in that same article, during the whole of his preceding life.

† "On hearing the case *ex-parte* Leicester, 6th Ves. jun. 429, where it was said, 'that a practice having prevailed for a series of years, contrary to the terms of an order in court, and sometimes contrary to an act of parliament, it is most convenient to suppose some ground appeared to former judges, upon which it might be rendered consistent with the practice; and therefore that it would be better to correct practice in future, not in the particular instance.' Whereas the author of these observations thinks that all practice which is contrary to an act of parliament, or to the terms of a standing order of court, originates in corruption, and ought to be abolished in the particular instance complained of, or when, or however, a practice, at variance with law or order, is first made known to the court."

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nion, which (until the great charter, and the before-mentioned statutes of King Edward III. and King Richard II., are repealed,) he is disposed to maintain: and which (though otherwise advised by his counsel) he then refused to retract.* The petition came on for hearing, and was supported by Mr. Mansfield and Mr. Romilly, with a spirit, and in a manner, peculiar to those advocates, and satisfactory to the feelings of the petitioner; and resisted by Mr. Attorney-General (Sir Spencer Perceval) and Mr. Richards.

In vain did Mr. Mansfield urge, that "*gratuity was the mother of extortion*," and Mr. Romilly state the intrepidity of his client. On that occasion, the author of these observations, who never heard an *angry judge* give a just judgment, bent beneath a torrent of power and *personal abuse*.

On the coming in of a new administration, in the year 1806, the author of these observations addressed a letter to Lord Erskine, and prepared to further hear his petition; but he was given to understand, by those who had once applauded his efforts,† that a *a change of men did not change measures; and since that time the irregular increase of fees and costs* has introduced much confusion into the law.

SECTION XI.

HOW THE OTHER CHIEFS WERE CORRUPTED ACCORDINGLY.

As to what regards the Chief of the Exchequer Judicatory, an indication has been seen in § 8. As to what regards King's Bench and Common Pleas, the like may be seen in § 12. Invitation,—"Take and eat." Seen it has been and will be, whether there was any backwardness as to acceptance.

Forget not that these men were, all of them, his creatures: breath of his nostrils; sheep of his pasture.

* "Mr. Mansfield sent for the author of these observations to his chambers, and there told him, that the Lord Chancellor *had expressed displeasure* at something said in a letter to his secretary, and advised an apology to be made. In reply, the author of these observations told his counsel, that he was prepared to maintain what he had written, and that he would not make an apology; and, having read to Mr. Mansfield the draft of the letter, Mr. Mansfield said that he recollected when Lord Thurlow was made Lord Chancellor, his lordship had mentioned to him in conversation, that he had been told that he was entitled to receive some fees, which he doubted his right to take. And Mr. Mansfield added, that such fees must have been those alluded to in the letter."

† "The letter to Lord Erskine was delivered to the late Mr. Lowton, who had a conversation with the author of these observations thereon, and Sir Samuel Romilly sent for and had his brief to reconsider."

SECTION XII.

HOW THE ILLEGALITY GOT WIND: AND HOW FELIX TREMBLED.

Of the spread of the contagion from Chancery to Exchequer, indications were given in § 8: mention was there made of its having completed the tour of Westminster Hall. What is there said is no more than general intimation: the manner *how*, comes now to be set forth.

Anno 1821, lived a broken botanist and ex-nurseryman, named *Salisbury*. To distinguish him from a namesake of the gentleman-class, *Salisbury minor* is the name he goes by among the Fancy. At the end of a series of vicissitudes, he had sunk into one of those sinks of misfortune, in which, to help to pamper over-fed judges, debtors are squeezed by jailors, out of the substance that should go to creditors. As from Smithfield an over-driven ox into a china-shop—breaking loose one day from his tormentors, Salisbury *minor* found means, somehow or other, to break into one of the great Westminster-Hall shops; in which, as often as a demand comes for the article so mis-called *justice*, bad goods are so dearly sold to all who can come up to the price, and denied, of course, to those who cannot. The china-shop scene ensued. Surprised and confounded, the shopmen exhibited that sort of derangement, which the French express by *loss of head—ils ont perdu la tête*. Under the notion of defence, confessions came out, which come now to be recorded.

Anno 1821, Nov. 21.—(The date is material.) Barnewall and Alderson's King's Bench Reports, Vol. V. p. 266.

"*In the Matter of Salisbury (in Person!)*

"Salisbury *in person* had obtained a rule *nisi*, for one of the tipstaffs of the court to answer the matters of his affidavit. The affidavit stated, that the tipstaff had taken a fee of half-a-guinea, for conveying him from the judge's chambers (to which he had been brought by *habeas corpus*) to the King's Bench prison, such fee being more than he had a right to demand, according to the table of fees *affixed in the King's Bench, in pursuance of a rule of this court*.

"*Gurney* and *Platt* showed cause, upon *affidavits* stating that the fee had been taken *for a very long period of time by all tipstaffs in both courts*, and that it was *allowed* by the *Master* in costs.

"The court, however, adverting to the statutes, 2 Geo. II. c. 22, § 4, and 32 Geo. II. c. 28, § 8, and the rule of court, of *Michaelmas* term, 3 Geo. II., and the table of fees settled in the following year, said, that it was *clear*, that the tipstaff had no right to take any other fee for taking a prisoner from the

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judge's chambers to the King's Bench prison, than six shillings, which was the fee allowed him in that table. They, therefore, ordered the fee so taken to be *returned* to the complainant."*

Figure to himself, who can, the explosion. *Bancum Regis* shaken, as by an earthquake—*Bancum Regis* in an uproar! — the edifice it had cost Lord Eldon twenty years to rear, laid in ruins. *We are above parliament*, had said, as above, Lord Eldon. "Alas! no," at the first meeting cried Lord Abbott: "I could not for the life of me, keep where you set us. I had not nerve for it. That fellow . . . . such impudence! who could have thought it? As to the fees, it is from parliament, you see, we must have them now, if at all. It may take you some little trouble; but you see how necessary it is, and you will not grudge it."

This is not in the report; but it is in the nature of the case, and that is worth a thousand law reports, drawn up by toads under harrows.

Think now of the scene exhibited in and by King's Bench: — culprit and judge under one hood — Guilty or not guilty? Not guilty? O yes, if the Master, whose every-day business it is to *tax* costs, knows not what they are: if the Chief-Justice, whose every-day business it is to *hear discussions* about costs, knows not what they are, or what they ought to be. See now how the account stands: — the money account. Of the 10*s.* 6*d.*, legalized, say 6*s.*: remains confessed to have been extorted, 4*s.* 6*d.*: sub-extortioner's profit, the 4*s.* 6*d.*: head-extortioner's, the 4*s.* 6*d.*, minus x: to find the value of x see above, § 4, and forget not, any more than Lord Eldon and Lord Abbott forgot, that pounds and thousands of pounds are made of pence and shillings.

Mark now another sort of account. Case, a criminal one. Co-defendants, had the list been complete, Tipstaff, Master, and Chief-Justice. Had it been as agreeable to punishers to punish themselves as others, what a rich variety of choice was here! Motion for imprisonment by *attachment* as above: for this is what is meant by *answering affidavits*: indictment for extortion, indictment for corruption, indictment for conspiracy; information for all or any of the above crimes.

Mark now the *denouement*. The case, as above, a criminal one: the crime not punished, but, without the consent of the sufferer, *compounded* for; of the fruit of the crime, the exact nominal amount ordered to be restored: — not a farthing even given to the hapless master-man, by whose sad day's labour thus employed, so much more than the value had been consumed in thus sueing for it: with cost of affidavits several times as much. After seeing in this precedent the utmost he could hope for — what man, by whom like extortion had been suffered from like hands, would ever tax himself to seek redress for it? Redress — administered in semblance, denied in substance. With not an exception, unless by accident, such, or to an indefinite degree worse, is Matchless Constitution's justice!

But the punishment? — where was the punishment? This is answered already. Had the order for redress comprised a sixpence beyond the 4*s.* 6*d.*, the inferior malefactor might have turned upon his principal, and the fable of the young thief, who at the gallows bit his mother's ear off, have been realized: — "Isn't it you that have led me to this? These four-and-sixpences that I have been pocketing — is there any of them you did not know of? Had it not been for this mishap, would not my place have been made worth so much the more to you, by every one of them? Is there any one of them that did not add to the value of the place you will have to dispose of when I am out of it? Why do you come upon me then? Can't you afford it better than I can? Pay it yourself."

But — the two learned counsel, who thus fought for the 4*s.* 6*d.* — *by whom* were they *employed?* — by Tipstaff, Master, or Chief-Justice? Not by Tipstaff, surely: seeing that his cause was so much the Chief-Justice's, he would not thus have flung away his money: he would not have given six, eight, or ten guineas to save a 4*s.* 6*d.*: these, if any, are among the secrets worth knowing, and which House of Commons will insist on knowing. Insist? — But when? when House of Commons has ceased to be House of Commons.

Well, then, this four-and-sixpenny tripartite business — is it not extortion? Is it not corruption? If not, still, for argument's sake, suppose, on the part of all three learned persons — all or any of them — suppose a real desire to commit either of these crimes; can imagination present a more effectual mode of doing it? Till this be found, spare yourself, whoever you are, spare yourself all such trouble as that of crying out shame! shame! contempt of court! calumny! blasphemy!

Contempt of court, forsooth! If contempt is ever brought upon such courts (and, for the good of mankind, too much of it cannot be brought upon them,) it is not in the telling of such things, but in the doing of them, that the culpable cause will be to be found.

Here, then, we see, were statutes — here (according to Lord Eldon's instructions) laid down as per § 9, at the outset — here were rules of court disposed of in the same way, and at one stroke. Anno 1801, in the first year of his reign — disposed of at one stroke, and in the same way. A liberty which might so easily be taken with acts of parliament — hard indeed it would have been, if a judge

* "See the table of fees in the rules of the King's Bench, p. 241." — Here ends the report.

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might not take it with the rules of his own court. Conformable (we see here exactly) was this operation to the instructions laid down by him, as per § 9, just twenty years before, anno 1801, in the first year of his reign. As to the rules of court, it was not in the nature of the case that they should present any additional difficulty; rules, which, if it were worth the trouble, and would not make too much sensation, he might have repealed in form at any time.

Be this as it may, here was the exact case, so long ago provided for by Eldonic providence: the case, which, being the principle laid down, with virtual directions given, for the guidance of his next in command, had been made broad enough to fit. "You need not be told (say these directions) how much more obedience-worthy common is than statute law:—law of our own making, than any of the law we are forced to receive from laygents. But, though you should find one of our own laws in your way—nay, though with one of *their's*, you should find in your way one of *our's* to give validity and strength to it—never you mind that; your business is to make sure of the fees. At the same time, for decency's sake, while our underlings, who get more of them than we do, are screwing them up (and you may trust *them* for *that*) you of course will know nothing of the matter. Should any unpleasant accident happen—such as the having the table with the lawful fee, in company with the proof of the additional money habitually exacted, bolted out upon you in the face of the public, you will of course be all amazement. Though the thing can never have taken place, but under your own eye—while the prisoner was beginning to be conducted from your own chambers, where you had just been examining him—never had you so much as suspected the existence of any such difference."

As to Lord Abbott, whatever want of disposition on his part there may have been to pay regard to acts of parliament, no such want could there have been as to any such instructions as these of Lord Eldon's. But whether it was that he had not got them by heart, or that when the time came to repeat them and apply them to practice, his heart failed him,—so it was—they were not followed: and so, out came the confession that has been seen: the confession in all its nakedness.

This is not all: not more than three years before, this very fee had been taken into consideration by specially-appointed authority, and the 4*s*. 6*d*. disallowed. Under the head of 'Tipstaff,' "the table of 1760" (say certain commissioners, of whom presently) "directs the fee of 6*s*. to be paid to the tipstaff that carries any prisoner committed at a judge's chambers to the King's Bench prison." .... "The fee of 10*s*. 6*d*. we conceive to have been taken in respect of these commitments .... for twenty-five years, and probably longer: but *we recommend* that the fee of 6*s*. only be received in future."*

Mark now the regard manifested by these commissioners—by these commissioners of Lord Eldon's—for the authority of parliament. Recommendation soft as lambskin: of the extortion, and contempt of parliament, impudent as it was, not any the slightest intimation, unless the rotten apology, thus foisted in instead of censure, be regarded as such. Of this recommendation, the fruit has been already seen: the fee taken, and, for aught that appears, uninterruptedly taken notwithstanding. What? In all the three intervening years, the Chief-Justice, had he never heard of any such recommendation?—never heard a *report*, of which his own court, with the fees belonging to it, were the subject?—never seen any thing of it?

And the commissioners? For what cause disallow the 4*s*. 6*d*.? Only because the act of parliament, and the contempt so impudently put upon it, and the extortion and corruption for the purpose of which the contempt was put, had been staring them in the face. Men, who from such hands accept, and in this way execute, such commissions—is not some punishment their due? Yes, surely: therefore here it is. Public—behold their names!—1. John Campbell, Esq. Master in Chancery;—2. William Alexander, Esq. then Master, now, by the grace of Lord Eldon, Lord Chief Baron of the Exchequer;—3. William Adams, Doctor of Civil Law;—4. William Osgood, Esq.;—5. William Walton, Esq.

Accompanied are these recommendations by certain *non-recommendations*. From those as to tipstaffs, reference is made to ditto as to Marshal: and there it is, that, after stating (p. 172) that his profit arises chiefly out of two sources, of which (be it not forgotten) *the tap* is one—with this source before them it is, that (after ringing the praises of it) another of their recommendations is—"that this matter be left in the hands of the court to which the prison more immediately belongs:" in plain English, of the Chief-Justice, whose interest it is maximize the profit in all manner of ways, and of whose emoluments they saw a vast portion, rising in proportion to the productiveness of *this* source. Throughout the whole of the report, except for a purpose such as this, not the least symptom of thinking exhibited: "*fees taken so much, we recommend so much*:" such, throughout, is the

* Report printed for the House of Commons—date of order for printing, 14th May 1818. Sole subject of it: "Duties, salaries, and emoluments as to the Court of King's Bench."

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product of the united genius of these five scholars of the school of Eldon.*

See now, Mr. Peel, and in its genuine colours, this fresh fruit of the consistency of your consistent friend. See, in this rich fruit, the effect and character of his commission. Oppose now, Mr. Peel, if you have face for it; oppose now, Mr. Attorney-General, if you have face for it: oppose now, Mr. Attorney-General Copley — for neither must your name be covered up — the permitting of the House of Commons to exercise the functions of the House of Commons.

Oppose now, if you have face for it, "the dragging the judges of the land" before the Catos whom you are addressing — the tribunal of parliament. Fear no longer, Mr. Peel, if ever you feared before, the obtaining credence for your assurance — that it was by Lord Eldon his Majesty was advised to commission Lord Eldon to report upon the conduct of Lord Eldon. Mr. Canning — you, who but two years ago — so light in the scale of sentimentalism is public duty weighed against private friendship, — (and such friendship!) — you, who so lately uttered the so solemn promise never to give a vote that should cast imputation upon Lord Eldon, — watch well, Sir, your time, and when, *these* imputations having come on, votes come to be given on them, repress then, if possible, your tears, and, wrapping yourself up in your agony, hurry out of the House.

SECTION XIII.

HOW THE CHANCELLOR WENT TO PARLIAMENT, AND GOT THE CORRUPTION ESTABLISHED.

THE explosion has been seen. Blown by it into open air, was the scheme of taxing without parliament, and in the teeth of parliament. At the same time, a handle for denunciation was left prominent; and it has been seen how broad an one: a handle too, which some *Williams* or other might at any time lay hold of, and give trouble: the trouble which the driver of pigs has with his pigs — the trouble of collecting honourable gentlemen together, and whistling them in when the question is called for. Delay, therefore, was not now in season. November 21, 1821, was the day on which the breach, as above, was made: a session did not pass without providing for the repair of it: the 10th of June 1822, is the day on which the first stone was laid; and how thorough and complete the repair is, remains now to be shown. The hand of parliament being the only applicable instrument, stooping at last to employ it could not but be more or less mortifying to a workman to whom, for so many years, it had been a football. But, to Lord Eldon, the part of the reed is not less familiar than that of the oak; and what was lost in universally applicable power will be seen gained in ease and tranquillity, reference had to this special and most valuable use of it.

Act 22d July 1822, 3 Geo. IV. c. 66. — Title, "An Act to enable the Judges of the several Courts of Record at Westminster to make Regulations respecting the Fees of the Officers, Clerks, and Ministers of the said Courts."

The preamble has been seen: business of it, skinning over the past illegality, section 6. Business of the first, empowering these same judges to screw up to a maximum, and without stint, the accustomed fees: of the second, to add any number of new ones: of the third, making it, to this effect, the special duty of all underlings to do whatever their masters please: of the fourth, anxiously easing them of the trouble of regulating solicitors' fees, forasmuch as nothing was to be got by it: of the fifth, providing, as has been and will be seen, for the concealment of the fees as before, should more be to be got at any time by their being concealed than by their being known: of the sixth, which is the last, providing compensation for any the smallest fee, which, by accident, should happen to slip out: should any such misfortune ever happen, the losers are not only authorised, but "*required*," to tell "*his Majesty*" of it.

For every possible additional *duty*, an additional fee, or batch of fees: Good. In § 14, or elsewhere, it will be seen how it is that, by multiplying such *duties* under the rose, equity pace, and equity cost, have been rendered what they are.

Everything at "*discretion*," (§ 1:) everything as they "*shall see fit*," (§ 1:) the people of England, all who have redress to seek for injury from without doors — all who have to defend themselves against any of those injuries of which these same judges are the instruments — all who have to defend themselves against injuries, the seat of which is in the pretended seat of redress — all who have to defend themselves against the attacks of any of those villains with whom Lord Eldon has thus placed these judges, together with himself, in partnership — all, all are thus delivered up bound, to be plundered in secret, without stint or controul, by the hands of these same judges. Never could more solicitude have been demonstrated: never more appropriate talent, as well as care, expended in satisfying it: so exquisite the work, the most exquisitely magnifying microscope might be challenged to bring to view a flaw in it. In

* Report of the commissioners on the duties, salaries, and emoluments in courts of justice; — as to the Court of King's Bench. "Ordered by the House of Commons to be printed 14th May 1818."

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the style of English legislation, it may be given as a model: as a study — for a young draughtsman, who, for sections a yard long, looks to be paid at so much a word. The same hand, which, had no better interest than the public's been to be provided for, would have left loop-holes, through which the entire substance of the measure might be extracted, has, in this its darling work, as if by an hermetic seal, closed all such crannies. Could this pamphlet have been made to hold it, I should have copied it, and pointed out the beauties of it. For comprehensiveness it has but one rival, and that is in the law called *civil law*. *Quod principi placuit legis habet vigorem*. For *principi*, put *judici*, you have the act of *English law* — the act of George the Fourth.

The enacting part could not be too clear of equivocation: and not a particle is to be found in it. The preamble presented an irresistible demand for equivocation; and here it is. Seen already (in § 5) has been this same preamble, with its essential word *effectually*. Note here the use of it: it is this. The more *effectually* to turn men's minds aside from the idea of the illegality, — causing them to suppose, that though nothing had been done but what was *legal*, strictly legal, yet, to give to what had been done its full effect, legal *machinery* in some shape or other was needed, in addition to such as learned workmen stood already provided with: and that, to give existence to such additional machinery was accordingly the object of the act. Now, the fact is, that no such additional machinery does the act provide or attempt to provide: not an atom of it. What it does, is — easing the hands of the criminals, of whatsoever check they felt applied by the consciousness of their so lately divulged criminality, — thus giving to them the undisturbed power of taxing the people for their own profit, without stint; and, for this purpose, rendering that power which had so long been arbitrary in *fact*, at length arbitrary by *law*.

Remains the clause about keeping the table of fees exposed to view. They are to be "kept hung up" — these table of fees — "hung up in a *conspicuous part* of the" room. Good: and while there hung up, what will be the effect of them? The same as of those hung up in virtue of those former statutes of George II., with the King's Bench rule that followed them. The *place* they are hung up in, is to be a conspicuous one. Good: but the *characters*? of these nothing is said; so that here is a loop-hole ready made and provided.

In the above-mentioned case,* which produced the demand for this act, a document, referred to as a ground of the decision, is — a rule of court, of Michaelmas term, 3 Geo. II.† and "the table of fees settled in the following year." In article 8th of the document intituled "Rules and Orders," &c. mentioned in that same rule of court, which, without any title, is in Latin, in speaking of the table of fees, it is said, that it shall be "fairly written in a plain and legible hand." With this clause lying before him — and he could not but have had it lying before him — with this clause lying before him it is, that the penner of this same act of Lord Eldon's contents himself with speaking about the *place*, and says nothing about the *hand*.

What the omission had for its cause — whether design or accident — judge, whosoever is free to judge, from the whole complexion of the business. Not that even in this same rule of court, with its "*fair and legible hand*," there was anything better than the semblance of honesty. Tables of benefactors to churches and parishes — tables of turnpike tolls — were they, even in *those* days, *written in a fair and legible hand*? No: they were painted in print hand, as they are still, in black and gold. But, if instead of *fair and legible*, the characters should come to be microscopic, and as illegible a scrawl as can be found — suppose in the grim-gribber hand called *court hand* — a precedent of this sort will not be among the authorities to be set at nought: this will not be among the cases in which, according to Lord Eldon's consistency, as per page 356, "It would be more consistent to suppose some ground appeared to former judges, upon which it" (the act of parliament, or the rule of court, or both) "might be rendered consistent with the practice" — meaning, with the practice carried on in violation of them.

Lord Eldon's Act, or *The Eldon Act*, should be the style and title of this act. Precedent, *Lord Ellenborough's Act*, — so styled in a late vote paper of Honourable House:‡ Lord Ellenborough's act, sole, but sufficient and characteristic, monument, of the legislative care, wisdom, and humanity of that Peer of Parliament, as well as Lord Chief Justice.‖

* 1821. Barnewell and Alderson, v. 266.

† See the book intituled "Rules, Orders, and Notices, in the Court of King's Bench . . . to the 21 Geo. II. inclusive." 2d edit. 1747. Page not referable to, there being no paging in the book!

‡ May 17th, 1825.

‖ Note, that "*effectually*" as all *future* corruption is sanctioned, nothing is said of any that is *past*. If, in the situation in question, the word *responsibility* were anything better than a mockery, the fate of Lord Macclesfield — and on so much stronger grounds — would await Lord Eldon, his instruments, and accomplices. But, forasmuch as all such responsibility *is* a mere mockery, the only practical and practicable course would be — for some member (Mr John Williams for example,) to move for a *bill of indemnity* for them: which motion, to prove the needlessness of it, would call forth another stream of Mr. Peel's eloquence: a reply might afford no bad

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As to the Chancellor's being the *primum mobile* of the act, — only for form's sake, and to anticipate cavil, can proof in words be necessary. The bill being a money bill, it could not make its first appearance in the House in which Lord Eldon rules these matters by his own hand. The members, by whom it was brought into the only competent house, were the two law-officers: and that, by these two official persons, any such bill could, consistently either with usage or propriety, have been brought in otherwise than under the direction of the head of the law, will not be affirmed by any one. The Act, then, was LORD ELDON'S Act.

SECTION XIV.

HOW THE HEAD OF THE LAW, SEEING SWINDLING AT WORK, CONTINUED IT, AND TOOK HIS PROFIT OUT OF IT.

SWINDLING is an intelligible word: it is used here for shortness, and because familiar to everybody. Look closely, and see whether, on this occasion, it is in any the slightest degree misapplied.

By statute 30 Geo. II. c. 24, § 1 — "All persons who knowingly or designedly, by false pretence or pretences, shall obtain from any person or persons, money .... with intent to cheat or defraud any person or persons of the same .... shall be fined or imprisoned, or .... be put in the pillory, or publicly whipped, or transported .... for .... seven years."*

1. "*All persons*," says the act. If, then, a *Master in Chancery*, *so* comporting himself as above, is not a person, he is *not* a *swindler*: if he *is* a person, *he is*.

2. And so, in the case of a *commissioner of bankrupts*, if any one there be who has *so* comported himself.

3. So likewise in the case of any other functionary, holding an office under Lord Eldon.

4. So likewise in the case of every *barrister*, practising in any of the courts in or over which Lord Eldon is judge; in the case of every such barrister, if *so* comporting himself.

5. Add, every *solicitor*.

If, however, it is true, as indicated in the samples given in § 2, that in the case of the solicitor, in respect of what he does in this way, he is, by the subordinate judge (the aforesaid Master) not only to a great extent *allowed*, but at the same time to a certain extent *compelled*, — here, in his case, is no inconsiderable alleviation: in the guilt of the official, that of the non-official malefactors is eclipsed, and in a manner swallowed up and drowned.

So far as regards Masters in Chancery: to judge whether, among those same subordinate judges under Lord Eldon, there be any such person as a *swindler*, and if so, what number of such persons, see the sample given in § 2.

Same question as to commissioners of bankrupts, concerning whom, except as follows, it has not as yet been my fortune to meet with any indications. Lists of these commissioners, 14: in each list, 5: all creatures, all removable creatures — accordingly, all so many virtual pensioners during pleasure — of Lord Eldon. Further subject of inquiry, whether these groups likewise be, or be not, so many gangs of his learned swindlers.

Indication from the Morning Chronicle, Friday, April 15, 1825.

At a common council, Thursday, April 14, information given by Mr. Favel. Appointment made by list 2d of these commissioners, for proof of debts in a certain case: hour appointed, that from 12 to 1; commissioners named in the instrument of appointment, Messrs. Glynn, Whitmore, and Mr. M. P. Horace Twiss. Attendance by Mr. Glynn, none: by Mr. Whitmore, as little: consequence, nothing done: by Mr. Horace Twiss, an hour and a half after the commencement of the appointed time, half an hour after the termination of it, a call made at the place. Had he even been in attendance from the commencement of the time, instead of stepping in half an hour after the termination of it, still, commissioners more than one not being present, no business could (it seems) have been done. To what purpose, then, came he when he did, unless it was to make a title to the attendance-fee? Moreover, for this *non-attendance* of theirs, Messrs. Glynn and Whitmore, have they received their *attendance*-fees? If so, let them prove, if they can, that they are not swindlers. Mr. Horace Twiss, who does not attend any part of the time, but steps in half an hour after, when his coming cannot answer the purpose, has *he* received for that day any attendance-fee? If so, then comes the same task for him to perform. Mr. Favel's candour supposes some excuse may be made for Mr. Twiss: if so, a very lame one it will be. An option he should have had to make is, to do his duty as a commissioner of bankrupts, and not be a member

occasion for Whig wigs, could a decent cloak be found for their departed saint.

* Let it not be said, that to come within this act it is necessary a man should have proposed to himself the pleasure of being, or of being called, a *cheat*; the man the act means, if it means any man, is he who, on obtaining the money by any false pretence, intends to convert it to his own use. Instead of the words *cheat* and *defraud*, words which — and not the less for being so familiar — require a definition, better would it have been, if a definition such as the above had been employed. But logic is an utter stranger to the statute-book, and without any such help from it as is here endeavoured to be given, the act has been constantly receiving the above interpretation in practice.

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of parliament, or do his duty as a member of parliament (oh, ridiculous!) and not be a commissioner of bankrupts: — a commissioner of bankrupts, and, as such, one of Lord Eldon's pensioners. Convinced by his commissionership of the immaculateness of his patron, commissioner makes a speech for patron, much, no doubt, to the satisfaction of both. Should a committee be appointed to inquire into Chancery practice — there, Mr. Peel, there — in Mr. Twiss, you have a *chairman* for it.

Meantime, suppose, for argument's sake, Mr. Twiss comporting himself in any such manner as to give just cause of complaint against him — be the case ever so serious — to what person, who had any command over his temper, would it appear worth while to make any such complaint? To judge whether it would, let him put the question to Mr. Lowe, as per § 10.

These men — or some (and which?) of them — being so many swindlers, — he who, *knowing* them to be so, *protects* them in such their *practices*, and shares with them — with all of them — in their *profits*, what is *he?* Is not he too either a *swindler*, or, if distinguishable, something still worse? If, with strict grammatical or legal propriety, he cannot be denominated a receiver of *stolen* goods, — still, the *relation* borne by him to these swindlers, is it not exactly that which the *receiver* of stolen goods bears to the *thief? Masters* in Chancery, 10; *Commissioners of Bankrupts*, 90; together, 100; and, upon the booty made by every one of them, if any, who is a swindler, does this receiver of a portion of their respective gains make his profit: these same swindlers, every one of them, made by him what they are —— Stop! Between the two sorts of receivers, — the thief-breeding and the swindler-breeding receivers, — one difference, it is true, there is. The *thief-breeder*, though, in so far as in his power, he gives *concealment* to his confederates, he does not, because he cannot, give them *impunity:* — whereas the *swindler-breeding* receiver, seeing that he can, gives both.

Masters in Chancery — creatures of this same creator, almost all, if not all of them — is there so much as one of them who is not a swindler — an habitual swindler? Say no, if you can, Lord Eldon! Say no, if you can, Mr. Secretary Peel! Deny, if you can, that your Mentor is in partnership with all these swindlers. Deny it, if you can, that, out of those who have accepted from him the appointment of reporting him blameless, two are of the number of these same swindlers.

"Oh, but," by one of his hundred mouthpieces, cries Lord Eldon, "nothing has he ever known of all this: nothing, except in those instances in which his just displeasure at it has well been manifested. Whatever there be that is amiss, never has been wanting the desire to rectify it — the anxious desire .... But the task! think what a task! think too of the leisure, the quantity of leisure necessary! necessary, and to a man who knows not what it is to have leisure! Then the wisdom! the consummate wisdom! the recondite, the boundless learning! Alas! what more easy than for the malevolent and the foolish to besputter with their slaver the virtuous and the wise!"

Not know of it indeed? Oh hypocrisy! hypocrisy! The keeper of a house of ill-fame .... to support an indictment against him, is it necessary that everything done in his house should have been done in his actual presence? Ask any barrister, or rather ask any solicitor, whom retirement has saved from the chancellor's prospect-destroying power — ask him, whether it be in the nature of the case, that of all the modes in which depredation has been practising in any of his courts, there should have been so much as one, that can ever have been a secret to him?

No *time* for it, indeed! Of the particular *time* and *words*, employed by him in talking backwards and forwards, in addition to the already so elaborately-organized general mass, as if to make delay and pretences for it, a thousandth — a ten thousandth part — would have served an honest man anywhere for a reform: a reform which, how far soever from complete, would suffice for striking off two-thirds of the existing mass, and who can say how much more?

Have you any doubt of this, Mr. Peel? — accept, then, a few samples: —

1. Reform the first. (Directed to the proper person.) *Order* in these words: *Charge for no more days than you attend.* Number of words, eight. At the Master's office, off go two-thirds of the whole delay, and with it, of the expense.

2. Reform the second. *Text: On every attendance-day, attend ten hours. Paraphrase:* Attend these ten, instead of the five, four, or three, on which you attend now. For your emolument, with the vast power attached to it, give the attendance which so many thousand other official persons would rejoice to give for a twentieth part of it.

3. A third reform. *In the year there are* 12 *months: serve in every one of them. Months excepted for vacation, those in which no wrong that requires redress* is *practised* anywhere.

4. A fourth reform. You are one person: any clerk of your's, another. The business of any clerk of your's is to serve *with* you, not *for* you. Serving by another is not serving, but swindling.

Small as is the number of words in the above proposed orders, anybody may see how many more of them there are than are strictly needful to the purpose of directing what it is desired shall be done.

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Numerous are the reforms that might be added: all of them thus simple; many of them still more concisely expressible.

Oh, but the *learning* necessary! the recondite lore! fruit of mother Blackstone's twice twenty years' lucubrations! Learning indeed! Of all the reforms that have been seen, is there a single one that would require more learning than is possessed by his lordship's housekeeper, if he has one, or any one of his housemaids?

Wisdom necessary for anything of all this? Oh hypocrites! nothing but the most common of all common honesty.

Of those, whom, because unsuccessful poor and powerless, men are in the habit of calling *swindlers*, the seat — that of many of them at least — is in the *hulks:* of those hereby supposed swindlers, whom, because rich and powerful, no man till now has ever called *swindlers* — the seat — the seat of *ten* of them at least — is in the *House of Lords.* As between the one class and the other, would you know in which, when the *principle of legitimacy* has given way to the *greatest-happiness principle*, public indignation will press with severest weight? Set them against one another in the balance.

1. *Quantity of mischief* produced — is that among the articles to be put into the scale?

Nothing, in comparison, the mischief of the second order: nothing the *alarm* produced by the offence of him whose seat is in the *hulks.* Against all such offences, each man bears what, in his own estimation, is little less than an adequate security — his own prudence: a circumstance by which the *swindler* is distinguished, to his advantage, from the *thief.* No man can, for a moment, so much as fancy himself secure against the hand of the swindler, if any such there be, whose seat is in the *House of Lords.* United in that irresistible hand, are the powers of fraud and force. Force is the power applied to the victim; fraud, the power applied to the mind of the public; applied as, with but too much success, it has been hitherto, to the purpose of engaging it to look on unmoved, while *depredation*, in one of its most shameless shapes, is exercised under the name of *justice.*

2. *Unpremeditatedness* — is it not in possession of being regarded as operating in extenuation of moral guilt? *Deliberateness*, as an aggravation? Deliberateness, does it not, in case of homicide, make to the offender the difference between death and life, under the laws of blood so dear to honourable gentlemen noble lords and learned judges? Of those swindlers, whose seat is in the hulks, how many may there not be, whose delinquency may have been the result of a hasty thought begotten by the craving of the moment? Answer and then say — of the swindler, if any such there be, whose seat is in the House of Lords, the offence, is it not the *deliberate*, the *regularly repeated*, the *daily* repeated, the *authentically recorded* practice?

3. *Quantity of profit* made — is that among the circumstances that influence the magnitude of the crime? For every penny made by the swindler whose seat is in the *hulks*, the swindler, if any, whose seat is in the *House of Lords*, makes 6*s.* 8*d.*: six-and-eight-pence? aye, six-and-eight-pences in multitudes.

4. *Indigence* — is it not in possession of being regarded as operating in extenuation of moral guilt? All have it of those whose seat is in the *hulks.* No such extenuation, but on the contrary, the opposite aggravation have they, if any, whose seat is in the *House of Lords.*

5. *Uneducatedness* — is it not in possession of being regarded as operating in extenuation of moral guilt? Goodness of education, or, at least, the means of it, as an aggravation? The extenuation, you have in the case of those whose seat is in the *hulks:* the aggravation, in the case of those, if any, whose seat is in the *House of Lords.*

6. *Multitude of the offenders* — does *that* obliterate the crime? Go then to the hulks and fetch the swindlers who serve *there*, to sit with their fellows, if such there be, who serve in the House of Lords.

7. *Long continuance* of the practice — is it in the nature of that circumstance to obliterate the crime? Much longer have there been swindlers out of the Master's office than there can have been in it, The earliest on record are those who "spoiled the Egyptians:" but with them it was all pure fraud: no force was added to it.

Learning — appropriate learning — of demand for this endowment, assuredly there is no want: and not only for this, which every lawyer speaks of, but for original and originating genius — an endowment which no lawyer ever speaks of. Adding to the mass in the *Augean stable*, every *ox* had wisdom enough for — every ox that ever was put into it: to employ a river in the cleansing of it, required, not the *muscle*, but the *genius* of a Hercules.

Wisdom? Yes, indeed: but of what sort? Not that which is identical with, but that which is opposite to, Lord Eldon's. Years spent in the pursuit of those which we have seen to be the *actual ends of judicature*, four-and-twenty. True: but by every year thus spent, a man will have been rendered, not the more, but so much the less apt, for pursuing the *ends of justice.* Lord Eldon serve the ends of justice? He knows not even what they are. Ask him what they are — at the end of half an hour employed in talking backwards and forwards, he will conclude with his speech in *ex-parte Leicester*, and the passage that has been seen in it. Ask what are

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the ends of justice? Thirty paces are more than I need go, to see boys in number, any one of whom, when the question had found him mute, or worse than mute, could answer and take his place.

Yes: in that man, in whom the will has been vitiated as his has been, the understanding — sure as death — has been vitiated along with it. Should a pericranium such as his ever meet the hand or eye of a Gall or a Spurzheim, they will find the organ of justice obliterated, and the organ of *chicane*, — a *process* from their organ of *theft* grown up in the place of it.*

If I misrecollect not, this section has been referred to for something to be said, as to the profit capable of being derived from the source here spoken of: if so, the reader's indulgence must be trusted to for a respite, till the entire of the judges'-salary-raising measure has been found ripe for a view to be taken of it.

* How to grant licence under the guise of censure:

Extract from the Examiner, Nov. 7, 1824:—

"*The Six-Clerks.*—In the Court of Chancery, on Monday, the following conversation occurred. An affidavit having been handed to the Lord Chancellor, his lordship asked, 'what is the meaning of "Agent to a Six-clerk," which I see there? What is his business?'—Mr. Hart's client stated, that the agent was a person who manages the business for a Six-clerk.—Lord Chancellor: 'And what does the Six-clerk himself?'—Solicitor: 'Attends the Master.'—Lord Chancellor: 'Then he is entirely out of the business of his own office: he does nothing in it?'—Solicitor: 'Nothing, my lord.—The Lord Chancellor (after a pause:) 'When I came into this court, the Six-clerks were the most efficient solicitors in the Court of Chancery. Some of the most eminent solicitors were clerks of that class, and used to transact their business, and draw up minutes with such ability, that we had few or no motions to vary minutes. But now the Six-clerk abandons his business to a person who knows nothing at all about it. 'Tis no wonder, then, that delays have crept into the practice, which we formerly knew nothing of. However, before it proceeds further, I'll take care that solicitors in this court shall be obliged to transact their business in person.'"

'When I came into this court:' that is to say, four-and-twenty years ago. Good, my Lord, and where have you been ever since? Incessant have been such threats: constant the execution of them, with the same punctuality as in this case. What solicitor, what barrister, is there, that does not understand this? Who that does not know, that where official depredation is concerned, what in English is a threat, is in Eldonish a licence?

When, as per sample in § 2, page 351, £700 was exacted in reduction of a demand of we know not how much more, for office copies of a particular of sale — office copies for which there was as much need, as for those which, according to the story, were once taken of the Bible — on that occasion was there any of this vapouring? Silent as a mouse was this Aristides, who could not endure the existence of the harmless agent, whose agency consisted in looking over the books, to see that his employers, the six drones, were not defrauded of the per-centage due to them from the labours of the sixty working-bees. But this summer-up of six-and-eightpences was an intruder. Lord Eldon's patronage was not increased by him, while official secrets were open to him. Such was his offence.

SECTION XV.

HOW KING GEORGE'S JUDGE'S IMPROVED UPON THE PRECEDENT SET BY KING CHARLES'S IN THE CASE OF SHIP-MONEY. *See above*, § 9.

THE improvement was an altogether simple one. The pocket, which received the produce of the tax imposed by King Charles's judges, was the King's. The pocket, which received and receives the produce of the tax imposed by King George's judges, was and is their own.

Now for consistency — now for the use of this same principle as a precedent: a precedent set, and with this improvement, in the seats and sources of what is called justice, and thence offered to the adoption of the other departments. But what applies to this purpose will be better understood when the consummation given to the system by the pending measure comes to be brought to view.

What *they* did, they contented themselves with doing, as it were, by the *side* of parliament: giving, indeed, their sanction to the operations of an authority acting without parliament, — but not, of their own authority, taking upon themselves to obstruct and frustrate the operations of parliament. Never did *they* levy war against the authority of parliament: never did *they* make known by express terms, that whatever parliament had ordained should, as they pleased, go for anything or for nothing: never did they adjourn obedience *sine die*: never did they say — "*A practice having prevailed . . . contrary to an act of parliament . . . it would be better to correct it in future*, not *in that particular instance*."†

SECTION XVI.

HOW TO BE CONSISTENT, AND COMPLETE THE APPLICATION OF THE SELF-SERVING PRINCIPLE.

Now as to consistency.—You, Lord Eldon, you who practise consistency,—you, Mr. Peel, you who admire it,—go on as you have begun. Assisted by your official instruments, you have planted in the statute-book, after having established it in practice, the self-serving, the self-corrupting, the self-gorging principle. You have rooted it in one department: plant offsets from it in the others. You have covered

† Lord Eldon, in VI. Vesey, jun. p. 433, as above, p. 356.

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with it the field of justice: go on with it, and cover with it the field of force.

Repair, in the first place, the ravage so lately made by the fabled dry-rot; that dry-rot which, not content with timber, rotted the china and the glasses. Give to the Duke of York the power of settling the pay of his subordinates, and levying, by his own order, the amount of it. . . . What! do you hesitate? Not to speak of loyalty, all pretence, then, to consistency is at an end with you. Dignity is, in your creed, the one thing needful: your judges are brimful of it, at least if it be in the power of gold to make them so. So far, "everything is as it should be." But the commander-in-chief — not to speak of the heir to the crown — has he not, in his situation, demand enough for plenitude of dignity? And forasmuch as, in your mathematics, Mr. Robinson — applied to administration of justice, aptitude is *as* dignity,* — say, if you can, how the same proposition should fail when applied to the still more dignified function of wielding military force?

Apply it next to the navy. For the benefit of Lord Melville and his Croker, give legality to ship-money, as, for the benefit of Lord Eldon and his Abbott, you have given it to extortion and denial of justice. Legalizing that mode of supply, now in the 19th century, you will add to it the improvements you have found for it in your own genius and your own age. You will not, as did the creatures of Charles I. make the *faux pas* of putting the produce into the King's pocket. No; you will remember what that experiment cost his Majesty's predecessor. You will, if you can get leave of envy, — you will put it into the pockets of Lord Melville, Mr. Croker, and their friends; and thus, in the navy department likewise, "will everything be as it should be."

Rhetoric and fallacy all this (says somebody.) Fallacy? Not it, indeed: nothing but the plainest common sense. Suffer not *yourself* to be blinded by one of those fallacies which timidity and self-distrust are so ready to oppose to indisputable truth. Say not to yourself, *all this is strong, therefore none of it is true.*

What *I do not* say is, that, in the two supposed cases, the *mischief* of the application is as great as in the real one.

What I *do* say is, that the *principle* would not be *different*. The principle different? no: nor the course taken more palpably *indefensible.*

* In Mr. Robinson's speech of 16th May 1825, as per *Globe and Traveller* of the next day, no less than *ten* times (for they have been counted) was this *ratio* assumed in the character of a *postulate:* assumed by the finance master, and by his scholars, *nemine contradicente*, acknowleged in that character: every one of them, for self, sons, daughters' husbands, or other *et cæteras*, panting, even as the hart panteth after the water-brooks, for the benefit of it. Number of repetitions, *ten* exactly; for Mr. Robinson had not forgot his Horace — with his *decies repetita placebit.*

SECTION XVII.

HOW LORD ELDON PLANNED AND ESTABLISHED, BY ACT OF PARLIAMENT, A JOINT-STOCK COMPANY, COMPOSED OF THE WESTMINSTER-HALL CHIEFS, AND DISHONEST MEN OF ALL CLASSES.

In general, joint-stock companies are no favourites with Lord Eldon; but general rules have their exceptions.

That between dishonest men of all classes, and judges taking payment to themselves out of a fund common to both, the strictest community of interest has place, has been proved, if anything was ever proved, over and over. A tax, into what pocket soever the money goes, cannot be imposed on *judicial pursuit*, but, to all who cannot advance the money, justice is denied, and all those who fail to do what has thus been rendered impossible to them, are delivered over to injury in all shapes, at the hands of all persons who are dishonest enough to take advantage of the licence so held out. A tax, into what pocket soever the money goes, cannot be imposed on the necessary means of *judicial defence*, but it offers, to all who can advance the money, and are dishonest enough to accept the offer, an instrument, wherewith, by the power of the judges, yet without their appearing to know anything of the use thus made of it, injury, in almost every imaginable shape, may be inflicted, — inflicted with certainty and impunity, and the correspondent sinister profit reaped, at the charge of all those who are not able to purchase the use of that same instrument for their defence. Thus, in so far as the produce of the exaction goes into the judge's pocket, the interest of the dishonest man cannot, in either of those his situations, as above, be served, but the interest of the judge is served along with it.

Of a partnership contract, whatever else be among its objects, one object as well as effect, is the establishing a community of interest between the several members: and, if the persons acting so described are not dishonest; and if, between them and the judge in question, a community of interest is not formed; let any one say, who thinks he can, in what more indisputable way it is in the power of man to be dishonest; and whether, between such a set of men and a set of dishonest judges, it would be possible for a community of sinister interest to be formed.

Not less difficult will it be found to say, how any man, judge or not judge, can fail to be dishonest, who, receiving money in proportion, consents, and with his eyes open, to

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the habitual promotion and production of injury in all imaginable shapes, in both or either of the situations described as above.

True it is that, in general, joint-stock companies, any at least that can be named on the same day with this for magnitude, have not been formed without *a charter:* and that, on the occasion here in question, no charter has been employed. Not less true is it, that in the establishment of other joint-stock companies, the power of parliament has been employed; and that, in the establishment of the joint-stock company in question, that hand, so superior to all morality, has, in the manner shown in § 13, most diligently and effectually been employed. In the concession of a charter, the hand of the Chancellor is regularly employed: and, in the passing of the acts of parliament in question, it has been shown, how that same learned hand has not been less primarily and effectually employed.

Such being the *partnership*, now as to the terms of it. A species of partnership as well known as any other is, — A. finds money; B. skill and labour. Of the partnership here in question, such are the terms.

Head of the firm, beyond all dispute, Lord Eldon. Found by him, in by far the greatest abundance, skill, labour, power, and example. Looked for by him, and received accordingly, profit in correspondent abundance. Behold, then, the firm of Eldon and Co. By what other name can the firm, with any tolerable degree of propriety, be denominated?

Apprised of the existence of this partnership, *Judge and Co.* is the denomination by which, for I forget what length of time — some thirty or forty years probably — in print as well as in conversation, I have been in the habit of designating it: not a pen, not a voice, having ever raised itself to controvert this undeniable truth. But though established by intrinsic power — by that power which is so much in the habit of setting at nought that of parliament — never, till Lord Eldon stood up, and with so much ease carried the matter through as above, was this Coryphæus of joint-stock companies established by an express act of parliament.

One all-embracing and undeniable truth, when the public mind is sufficiently familiarized with it, will remove doubts and difficulties in abundance; it will serve as a key to everything that, in this country, has ever been done in the field of judicial procedure. From the Norman conquest down to the present time, diametrically opposite to the ends of justice have been the actual ends of judicature: judicial establishment and judicial procedure included, but more especially judicial procedure. Paid, as judges have been, by fee — paid by taxes, the produce of which has all along been liable to be augmented, and been augmented accordingly by themselves, at no time could the system have been in any better state. Suppose that, in those their situations, and *that* in the most barbarous times, judges would have for the end of action the happiness of suitors? As well might you suppose that it is for the happiness of negroes that planters have all along been flogging negroes; for the good of Hindoos that the Leadenhall-street proprietors have all along been squeezing and excoriating the sixty or a hundred millions of Hindoos.

SECTION XVIII.

HOW THE KING'S CHANCELLOR EXERCISED DISPENSING POWER.

To those who have read §§ 9 and 10, or § 9 alone, this can be no news. But of the nature and magnitude of the dispensing power thus assumed and exercised by Lord Eldon, conception may be helped by a few words more.

James the Second and his advisers operated openly and rashly. Prerogative in hand, they ran a tilt against parliament law. Lord Eldon was Lord Eldon. In a cause of no expectation, out of sight of all *lay-gents*, — out of sight of all men but his co-partners in the firm, of which he is the head, — he laid down the fundamental principle. When, under a so unexpected opposition, his good humour, habitual and pre-eminent as it is, forgot itself for a while, — not so his prudence. Taking instruction from the adversary, he made a full stop, nor, till the impediment ceased, could he be made to move a step, by all the importunity we have seen employed, in the endeavour to urge him on towards the consummation of his own schemes.

Still out of the sight of *lay-gents*, when, on the cessation of the interregnum, he remounted the throne, and, like Louis XVIII. reaped the benefit of whatever had been done for the consolidation of it by the usurper, — the obstructor, persevering, as we have seen him, being for the time dispirited by the rebuff received from Lord Erskine, under the tuition of the learned Jack-of-both-sides, — still, he imposed not any fresh tax, contenting himself with increasing — in the manner and to the extent, samples of which have been seen in § 2 — the produce of those he found established. Nor was this the whole of his labour or of his success: for we have seen how (still out of sight of the *lay-gents*) at times and in ways altogether invisible to unlearned eyes (at what tables, and over what bottles, must be left to imagination) he had succeeded in completely impregnating his Westminster-hall creatures, and, in their several judicatories, giving complete establishment to his plan, as well in principle as in practice.

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Then again, when another unexpectable mishap befel him, and the webs, which the united strength of so many learned spiders had, for such a length of time, been employed in weaving, were broken through and demolished altogether by the irruption of one poor hunted fly, — even this shock, severe as it could not but be, did not make him relinquish his high purpose. Bold, where boldness was requisite, pliant where pliancy, all the sacrifice it brought him to was — the accepting from parliament, and that too with improvement, the consummation of the ambitious and rapacious plan, at the commencement of which the nature of the case had obliged him to act, though with all prudent and practicable secresy, against parliament.

Thus much as to the *mode* — now as to *effect:* and the *extent* given to it. *James the Second*, with his dispensing power, placed a catholic priest in the Privy Council, and a catholic, or no less obsequious protestant fellow, in an Oxford college. *John the Second* gave the dispensing power, not only to himself but to all his underlings, covering thus, with a so much more profitable power, the whole field of judicature.

SECTION XIX.

CHARACTER EVIDENCE.

Against specific indications such as these, Honourable House and the Old Bailey receive a sort of evidence, which is neither quite so easily obtained, nor quite so efficient when obtained, in the Old Bailey as in Honourable House. It may be called, and, for aught I know, is called, *character evidence*. *Quantity*, in pretty exact proportion to that of the hope and fear, of which he, who is the subject of it, is the object. *Quality*, determined by the same causes. *Colours*, two — white and black.

But for my old friend, Mr. Butler, no such evidence as this would have been offered — no such section as this have been written. Nor yet, if in the laud heaped up by him upon Lord Eldon, he had contented himself with using his own hand. But the hand, to which he has assigned this task, is the hand of Romilly: that confidence-commanding and uncontradictable hand, which for this purpose, resurrection-man like, he has ravished from the tomb.

Having, in the course of between thirty and forty years' intimacy, been in the habit of hearing sentiments of so widely different a tendency, on every occasion, delivered in relation to this same person, — silence, on an occasion such as the present, would have been so little distinguishable from assent, that I could not sit easy without defending myself against what might otherwise have appeared a contradiction, given to me by my departed and ever-lamented friend.

In relation to Lord Eldon, I have no doubt of Romilly's having used language, which, at a distance of time, and for want of sufficient discrimination, might naturally and sincerely enough, by a not unwilling hand, have been improved into a sort of panegyric thus put into his mouth. But, by the simple omission of one part of it, the strictest truth may have the effect of falsehood.

With a transcript of the panegyric in question, or of any part of it, I will not swell these already too full pages. Suffice it to mention my sincere wish, that it may be compared with what here follows.

By my living friend, — my departed friend, I have reason to think, was never seen but in a mixed company: assured I well am, and by the declaration of my departed friend, that between them there was no intimacy. Between my departed friend and myself, confidence was mutual and entire.

Romilly was among the earliest, and, for a time, the only efficient one of my disciples.*

To Romilly, with that secresy which prudence dictated, my works, such as they are, were from first to last a text-book: the sort of light in which I was viewed by him, was, in Honourable House, in his own presence, on an ever-memorable occasion, attested by our common friend, Mr. Brougham.†

Not a *reformatiuncle* of his (as *Hartley* would have called it) did Romilly ever bring forward, that he had not first brought to me, and conned over with me. One of them — that in which Paley's love of arbitrary power was laid open — was borrowed from my spiders, under whose covering they may still be found. The project so successfully opposed by Lord Eldon's Sir William Grant — the endeavour to prevail upon honourable gentlemen to divest themselves of the power of swindling in their individual capacities, — was, to both of us, a favourite one. Nothing of this sort could ever come upon the carpet, but the character of Lord Eldon came of necessity along with it: a few lines will give the substance of volumes. The determinate opposer of everything good; the zealous, able, and indefatigable supporter of everything evil, from which, to the ruling one or the ruling few, reputed good, in any the smallest quantity, at the expense of the many, appeared derivable.

"Well! and what chance do you see of the

* He was brought to me by my earliest — the late *George Wilson* — who, after leading the Norfolk circuit for some years, retired with silk on his back to his native Scotland.

† Hansard's House of Commons Debates, 2d June 1818. "He (Mr. Brougham) agreed with his hon. friend, the member for Arundel, Sir S. Romilly, who looked up to Mr. Bentham with the almost filial reverence of a pupil for his tutor."

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evil genius's suffering it to pass?" This, on one part was the constant question. "Why . . . . just now, things are so and so:" stating, or alluding to, some hold, which, at the moment, he thought he might have upon Lord Eldon. A favourable circumstance was — that, though regarding the M. P. with the eye with which he could not but regard one of the most troublesome of his political opponents, — the Chancellor — such, in his estimation, was the legal knowledge and judgment of Romilly — was in the habit of paying to the arguments of this advocate not less, but even more, deference, than, in the eyes of the profession, was always consistent with justice; so at least I have heard, over and over again, from various professional men. In Romilly's acquirements and character he beheld a leaning-stock, the value of which he knew how to appreciate.

Now for the like, through channels less exposed to suspicion: —

"The state of the court of Chancery is such, that it is the disgrace of a civilized society." These are the words furnished me, in writing, by a friend, as among the very words used by Romilly, but a few months before his death, in a mixed company. It was at a *place* which, for several days of his last autumn (a place I occupied in Devonshire,) afforded to the relator various free conversations, besides those at which I was present. — General result: — "Lord Eldon himself the cause of many of the abuses; of the greater part of the others, the remedy always in his own hands."

"If there is a hell, the court of Chancery is hell." Words these, given as the very words uttered by Lord Erskine but a few weeks before his death, in conversation with another person, from whom I have them under his own hand.

Both relators most extensively known, and not more known than trusted. On any adequate occasion, both papers should be visible.

Judex à non judicando, ut lucus à non lucendo, the sort of service of all others for which Lord Eldon is not only most eminently but most notoriously unfit,* is the very service for the performance of which his unexampled power may have been originally

* I would willingly have said *most unfit*, but truth, as will be seen, forbids me.

Saul and Jonathan were Lord Eldon and Lord Redesdale. Lord Eldon, attorney-general; Lord Redesdale, solicitor-general: Chancellors—Lord Eldon of England; Lord Redesdale, of Ireland. Scholars of the school of Fabius, but with one difference: — by the Roman cunctation, everything was perfected: by the English and Irish, marred.

The London laid a wager with the Dublin Chancellor, which should, in a given time, do least business. Dublin beat London hollow.

Witness, Earl Grey, — in those days Lord Howick.[a]

[a] Cobbett's Debates, IX. 731, July 3, 1807. House

"When he" (Mr. Ponsonby) "succeeded to the office," (succeeded to Lord Redesdale) "the Chancery court of Dublin was in arrears for *six* years of *notices*, for *six hundred motions*, and for *four hundred and twenty-seven causes*: — when he" (Mr. Ponsonby) "quitted office, he had got under *all the notices* and *motions*, and had brought down the *causes* to *two hundred*, besides going through the current business. Had he remained in office a few months longer, not a single *cause* would have been left undetermined."[b]

House of Commons. *Pensions to Chancellors.* From the speech of Lord Howick, now Earl Grey.

[b] This single incident speaks volumes: it paints *Matchless Constitution* to the life. Take two traits, out of more.

1. Profundity and universality of the contempt of human happiness and justice, in the breasts of the ruling and would-be-ruling few.

During the whole six years, during which Lord Redesdale, with his unfitness staring him and everybody in the face, was paralysing justice and manufacturing misery by wholesale — not only his creator silent, but every member of the *aristocracy* on both sides, in Ireland as well as in England. Down to this moment, never would anybody have heard of it, but for a personal squabble about Mr. *Ponsonby*, and a clause in his pension of retreat.

Mr. Ponsonby, with his matchless, and, but for admission, incredible aptitude, — turned out in Ireland! Lord Eldon, after his six years perpetually demonstrated inaptitude, restored, and continued with continually increasing influence!

As to *delay*, think from hence, whether, though in that, as well as all other shapes, abuse runs through every vein in the system — think whether, of that delay which drew forth the *present* complaints, there was any other cause than the difference, in point of dispatch, between this one man and every other; and whether, while this one man is where he is, deliverance from evil in that shape, any more than in any other, be possible.

Henceforward, in Honourable House, or in Right Honourable House, — on the one side, or on the other, — should any man have the hardihood to stand up and declare, that on either side there is any more real regard for justice there than in the hulks — or in men's breasts any more sympathy for the sufferings of the people than in the cook's for the eels she is skinning — tell him of this!

2. Double-bodied monster, head judge and head party-man, back to back: fitter to be kept constantly in spirits in an anatomy school, than one hour in the cabinet and the next hour on the bench. Behold in this emblem one of the consequences of having one and the same man to sit as sole highest judge, with all the property of the kingdom at his disposal, and in the cabinet to act as chief organizer of intrigues, and moderator of squabbles about power, money, and patronage: the cabinet situation being the paramount one, — the most transcendent aptitude for the judicial situation cannot keep him in it — the most completely demonstrated inaptitude remove him out of it! This under Matchless Constitution, under which the most loudly trumpeted tune is — *the independence of the judges.*

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placed, but if pretended, so falsely pretended, to be still kept in his hand.

This being premised, and admission made of the facility with which, for purposes such as have been brought to view, he can wrap his misery-breeding meaning up in clouds, such as, while transparent to accomplices and natural allies, shall be opaque to all destined victims, — I must, for shortness, refer my readers to Mr. Butler's panygeric. Sending them to a work which has already had ten times as many readers as any of mine can look to have, I secure myself against the consciousness of injustice, and, I hope, from the reproach of it.

I will advance further in my approach to meet him.

On any of those nice points on which, expectation being equally strong and sincere on both sides, the difference between right and wrong being scarce discernible, decisions, were it not for appearances, might, with as little prejudice to the sense of security, be committed to lot as to reflection holding the scales of justice, — on any of these sources of doubt and display, which, in any tolerable system of legislature-made law, a line or two, or a word or two, would have dried up — Lord Eldon, at the expense of years, where another man would have taken days, has given to the amateurs of difficulty a degree of satisfaction beyond what any other man could have given to them: to them, satisfaction; to himself, reputation — instrument of power applicable to all purposes. This, by the having stocked his memory with a larger mass than perhaps any other man (Romilly possibly excepted) of the cases known to have sprung up within the field of equity, — and the having also enabled himself, with correspondent facility, to make application of them to the purpose of each moment, whatsoever be that purpose, whether it be to lead aright, to mislead, or to puzzle and put to a stand, himself or others.

So much for intellectuals: now for morals. Beyond all controversy,—recognised not less readily by adversaries than by dependents, one politico-judicial virtue his Lordship has, which, in his noble and learned bosom has swelled to so vast a magnitude, that, like Aaron's serpent-rod, it shows as if it had swallowed up all the rest. In the public recognition of it, trembling complaint seeks an emollient for vengeance; decorous and just satire, a mask. After stabbing the *Master of the Abuses* through and through with facts, Mr. Vizard takes in hand the name of this virtue, — and, *innuendo*, this is the only one that can be found, lays it like a piece of gold-beater's skin on the wounds. That which beauty, according to Anacreon, is to woman, — *courtesy*, according to everybody, is to Lord Eldon: to armour of all sorts — offensive as well as defensive — a matchless and most advantageous substitute. With the exception of those, whom, while doubting, he is ruining, and, without knowing anything of the matter, plundering,— this it is that keeps everybody in good humour: everybody — from my lord duke, down to the barrister's servant-clerk. Useful here, useful there, useful everywhere, — of all places, it is in the cabinet that it does knight's service. It is the *court sticking-plaster*, which, even when it fails to heal, keeps covered all solutions of continuity: it is the *grand imperial cement*, which keeps political corruption from dissolving in its own filth. Never (said somebody once) never do I think of *Lord Eldon* or *Lord Sidmouth*, but I think of the aphorism of *Helvetius* — *Celui qui n'a ni honneur ni humeur est un courtezan parfait.*

When this virtue of the noble and learned lord's has received its homage, the rest may be most effectually and instructively made known by their fruits. These fruits will be his *res gestæ:* exploits — performed throughout, or in the course of, his four-and-twenty years' dominion over the fields of judicature and legislation. Enterprises consummated — enterprises in progress — measures not originating with him, but taken up by him and improved — exploits performed by his own hands, exploits performed by the hands of his creatures, or other instruments; — under one or more of these heads, were any such exactness worth the space and trouble, would some of these exploits be to be entered, — under another or others, others. But, forasmuch as all *judicial* censure is altogether out of the

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Such was the *alter idem* appointed by Lord Eldon to sit with *idem*, and report the non-existence of delay, together with the most effectual means of removing it.

Keeping Falstaff in his eye, — Inefficient myself, I am the cause (said Lord Eldon to himself) that inefficiency is in other men. In Dublin my foil, in London my Mitford, shall be at the head of my securities that nothing shall be done in the commission, which with my disciple Peel to laud and defend me — I will establish for that purpose.

Practical lesson: — Never, by any other means than the making the ruling few *uneasy*, can the oppressed many obtain a particle of relief. Never out of mind should be the parable of the *Unjust Judge*.

As to Lord Redesdale, digression upon digression as it is, candour and sympathy compel the mention — he, like Mr. Peel, has committed one act of rebellion against his creator: he, too, has made one departure from *consistency*. Mr. *Peel's* is the *special-jury act: Lord Redesdale's, the insolvency act.* Should the day of repentance ever come, — each, with his bill in his hand, may cry, like *Lovelace* under the avenging sword — Let this expiate! But Lord Eldon! where will he his atonement? One alone will he be able to find, and that he must borrow of *Lord Castlereagh.*

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question, and the space and research necessary for such distinctions altogether unaffordable, they must unavoidably be omitted. Under each head, it will be for the reader, from what he has seen or heard, or may choose to see or hear, to consider whether, and, if yes, how far, the imputation attaches. To improve upon these hastily collected hints, and complete the investigation, would, if performed by a competent hand, assuredly be a most interesting, as well as useful work.

1. Nipping in the bud the spread of improvement over the habitable globe, ruining fortunes by wholesale, and involving in alarm and insecurity a vast proportion of the vast capital of the country, by wantonly-scattered doubts, leaving the settlement of them to a future contingent time that may never come.*

2. Rendering all literary property dependent upon his own inscrutable and uncontroulable will and pleasure.

3. Establishing a censorship over the press, under himself, with his absolute and inscrutable will, as censor: inviting, after publication with its expense has been completed, applications to himself for prohibition, with profit to himself in these, as in all other instances.

4. Leaving the line of distinction between cases for *open* and cases for *secret* judicature, for so long as there is any, at all times dependent on his own inscrutable and uncontrovertible will and pleasure, establishing and continually extending the practice of covering his own proceeding with the cloak of secresy.

5. Rivetting, on the neck of the people, the continually pinching yoke of an aristocratical magistracy, by rendering all relief at the hands of the chancellor as hopeless, as, by artificial law expenses, and participation in sinister interest and prejudice, it has been rendered at the hands of the judge.

6. On pretence of heterodoxy, by *ex post facto* law, made by a single judge for the purpose, — divesting parents of the guardianship of their own children.

7. Injecting into men's minds the poison of insincerity and hypocrisy, by attaching to pretended misdeeds, sufferings, from which, by an unpunishable and unprovable, though solemn act of insincerity, the supposed misdoer may, in every case, with certainty exempt himself.†

* Of this broadcast dissemination of uncertainty, one obvious cause may naturally be found in the profit made in the two great shops — the *private act of parliament shop* and the *charter shop*, in which the right of associating for mutually beneficial purposes is sold at so enormous a price, — for the benefit of men, by whom nothing but obstruction, in this and other shapes, is contributed.

Wheresoever, in the case of a public functionary, remuneration wears the shape of fees, there, abuse in every shape is sure to have place. Not only in judicial offices so called, but in all offices whatsoever, such cases excepted, if any, in which, for special adequate cause, special exception can be shown, salary should be substituted for fees.

In the case of patents for invention, exaction in this shape has swelled to an enormous magnitude. Justice, in the shape of reward for inventive genius, denied to the relatively poor, that is to say, to probably the far greater number — sold at an enormous price to the relatively rich: all inventions, — the authors of which are not themselves rich enough to carry them through, nor able to find a capitalist to join with them, — nipt in the bud. Official men, lawyers and non-lawyers in swarms, who contribute nothing but obstruction, murdering invention thus in the cradle, ravish from genius its reward, and in case of failure, aggravate the pressure of ill success. To see the use of *Matchless Constitution*, on this occasion, compare the price, paid by inventive genius for this security in the United States and in France. Note, that on these occasions, that plunderage may be tripled, the three kingdoms are disunited.

In all, or most of these cases, Lord Eldon, after having had a little finger in the pie when Attorney-general, has a finger and thumb in it now that he is Chancellor: adding to the pleasure of licking in the sweets, the gratification of obstructing improvement — called for this purpose *innovation*.

A set of motions, calling for returns of these several sources, and of the masses of emolument derived from each by the several functionaries, could scarcely be negatived.

† Questions allowed to be put to a proposed witness: —"Do you believe in the existence of a God?" If he, who does not believe, answers that he does,—thus answering falsely, he is received: if his answer be, that he does not believe, — speaking thus truly, he is rejected of course.

It is by exploits such as this, that rise has been given to this appalling question: "Which, in the capacity of a proposed witness, is most trustworthy — the Christian, priest or layman, who, for a series of years, has never passed a day without the commission of perjury, — or the Atheist, who — when at the instance of Lord Eldon, or any one of his creatures in the situation of judge, interrogated as to what he believes — submits to public ignominy, rather than defile himself with that abomination in so much as a single instance?" Christians! such of you as dare, think of this and tremble!

Question, as to this virtual statute, the source and seat of which is in the breast of Lord Eldon: — If this is not a subornation of perjury, what is or can be? Lord Eldon — is his mind's eye really so weak, as, throughout the whole field of legislation, to be kept by words from seeing things as they are?[a] Decide who can, and give to head or heart — sometimes to the one perhaps, sometimes to the other — the credit of this blindness.

[a] As to the constant and all-pervading habit of perjury, see "*Swear not at all.*" For cleansing judicature of this abomination, a not unpromising course is in the power of individuals. Any suitor, who sees a witness of whose testimony he is apprehensive — if the witness belongs to any of the classes in question, let his counsel have in hand a copy of the statutes in question, asking him whether he did not swear observance to every one of

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8. In all manner of shapes, planting or fixing humiliation and anxiety in the breasts of all who, on points confessedly too obscure for knowledge, oppose him, or refuse to join with him, in the profession of opinions, in relation to which there is no better evidence of their being really his, than the money and power he has obtained by the profession of them.

9. Pretending to establish useful truth by the only means by which success to pernicious falsehood can ever be secured. Proclaiming, in the most impressive manner, the falsehood and mischievousness of everything that is called *religion*,— by punishing, or threatening to punish, whatsoever is said in the way of controverting the truth or usefulness of it.

10. Bearding parliament, by openly declaring its incapacity to render unpunishable anything to which the judges, with the words *common law* in their mouths, shall have been pleased to attach punishment, or take upon them to punish: — thus, by the assumed authority of himself, and those his creatures, keeping men under the rod of punishment, for habits of action, which, in consideration of their innoxiousness, had by parliament been recently exempted from it: as if parliament had not exempted men from *declared* and *limited*, but for the purpose of subjecting them to *unconjecturable* and *unlimited* punishment. Witness the Unitarians, and all others, who will not, at his command thus signified, defile themselves with insincerity, to purchase the common rights of subjects.

11. Doing that which even parliament would not dare to do: and because parliament would not dare to do it, doing it with no other warrant than this or that one of a multitude of words and phrases, to which *one* import as well as *another* may be assigned at pleasure: witness *libel, blasphemy, malice, contra bonos mores, conspiracy, Christianity is part and parcel of the law of the land:* converting thus at pleasure into crimes, any the most perfectly innoxious acts, and even meritorious ones: substituting thus, to legislative definition and prohibition, an act of *ex post facto* punishment, which the most consummate legal knowledge would not have enabled a man to avoid, and as to which, in many an instance perhaps, it was not intended that it should be avoided.*

All this — which, under a really-existing constitution, grounded on the greatest-happiness principle, would furnish matter for impeachment upon impeachment — furnishes, under the imaginary "matchless" one, matter of triumph, claim to reward, and reward accordingly.

12. Poisoning the fountain of history, by punishing what is said of a departed public character on the disapproving side — while, for evidence and argument on the approving side, an inexhaustible fund of reward is left open to every eye: thus, by *suppression*, doubling the effect of *subornation, of evidence*. This by the hand of one of his creatures: his own hand, without the aid of that other, not reaching quite far enough.

The title *Master of the Abuses*, which occurs in p. 372, may perhaps have been thought

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* But Parliament — contempts of its authority all the while thus continually repeated — what does it say to them? Say to them? why nothing at all, to be sure: Cabinet, by which the wires of Parliament are moved, desires no better sport. Chancellor — by whom the wires of Cabinet are moved, and by whom the acts of contempt are committed or procured — looks on and laughs in his sleeve.

Contempt of Parliament indeed! Parliament desires no better than to be thus contemned: and to be assured of this, observe whether, of the indications given in these pages, it will suffer any, and what, use to be made. Contempt of Parliament! Why, all this is the work of Parliament itself. That which, with its own forms, it could not do without a world of trouble—what it might even be afraid to do — (for where guilt abounds, so does cowardice)—it does by simple connivance, without a particle of trouble. But why talk of *fear*? On each occasion, whatever is to be done, the object with all concerned is, to have it done with least *trouble* to themselves. By the hand of a judge, those by whom parliament is governed do, without any trouble, that which without trouble in abundance could not be done by the hand of parliament.

In flash language, *common law* — in honest English, *judge-made law*—is an instrument, that is to say, judges are instruments — for doing the dirty work of parliament: for doing in an oblique and clandestine way, that which parliament would at least be ashamed to do in its own open way.

Nor, for the allotment of these parts, is any such labour as that of concert or direction necessary. Nothing does the purpose require that an English judge should do, more than what in his situation human nature and habit effectually insure his doing: giving, on every occasion, to his own arbitrary power every possible extent, by all imaginable means. While this is going on, so long as what he does suits the purposes of his superiors, it is regarded, of course, with that approbation of which their silence is such perfectly conclusive evidence. On the other hand (to suppose, for argument's sake, an effect without a cause) should he ever in any the smallest degree obstruct their purposes, any the least hint would suffice to stop him. What could any judge do— what could even Lord Eldon hope to do—against the will of monarchy and aristocracy in parliament?

of these statutes, and whether, in the breach of this or that article, he did not constantly live: on denial, he will be indictable for perjury: on admission, it will be a question whether he can be heard.

Lord Eldon! did you never take that oath? Lord Eldon! did you never violate it? Think of this, Lord Eldon! — *Mr. Peel!* did you never take that oath? Mr. Peel! did you never violate it? Think of this, Mr. Peel!

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to require explanation. It was suggested by that of *Master of the Revels*, coupled with the idea of the enjoyments in which he and his have for so many years been seen *revelling* by the exercise given to the functions of it.

The *Mastership of the Revels* being abolished, or in disuse — the *Mastership of the Abuses* appears to have been silently substituted: and Lord Eldon presents himself as having been performing the functions of the office, as yet without a salary: with his Masters-in-Chancery, serving under him in the corresponding capacity, and on the same generous footing, on the principle of the *unpaid magistracy*. A subject for calculation might be — at what *anno domini* the business of all the *denominated* offices, possessed by those Masters and their Grand Master respectively, will have been brought into the state, into which, under his lordship's management, that of the *Six-clerks* has already been brought, together with that of the *six offices*, with which the *future* services of his honourable son have been so nobly and generously remunerated? — at what halcyon period these offices will, with the rest, have been sublimated into sinecures, and the incumbents apotheosed into so many *Dii majorum* or *Dii minorum gentium* of the Epicurean heaven?

To help conception, a short parallel between the noble and learned Lord, and his noble and learned predecessor Jefferies, may be not altogether without its use. *General Jefferies* had his *one* "*campaign*:" *General Eldon* as many as his command lasted years. — The deaths of Jefferies's *killed-off* were speedy: of Eldon's, lingering as his own resolves. The deaths of Lord Jefferies's victims were public — the sufferers supported and comforted in their affliction by the sympathy of surrounding thousands: Lord Eldon's expired, unseen, in the gloom of that solitude, which wealth on its departure leaves behind it. Jefferies, whatsoever he may have gained in the shape of royal favour — source of future contingent wealth — does not present himself to us clothed in the spoils of any of his slain. No man, no woman, no child, did Eldon ever kill, whose death had not, in the course of it, in some way or other, put money into his pocket. In the language, visage, and deportment of Jefferies, the suffering of his victims produced a savage exultation: in Eldon's, never any interruption did they produce to the most amiable good-humour, throwing its grace over the most accomplished indifference. Jefferies was a tiger: Eldon, in the midst of all his tears, like Niobe, a stone.

Prophet at once and painter, another predecessor of Lord Eldon — Lord Bacon — has drawn his emblem. "Behold the man," says he, "who, to roast an egg for himself, is ready to set another's house on fire!" So far so good: but, to complete the likeness, he should have added—*after having first gutted it*. One other emblem — one other prophecy: — is it not written in the Arabian Nights' Entertainments? — Sinbad the Sailor, *Britannia*: Old Man of the Sea, the Learned Slaughterer of Pheasants, whose prompt deaths are objects of envy to his suitors. After fretting and pummelling, with no better effect than sharpening the gripe — the Arabian slave, by one desperate effort, shook off his tormenting master. The entire prophecy will have been accomplished, and the prayers of Britannia heard, should so happy an issue, out of the severest of all her afflictions, be, in her instance, brought to pass.

POSTSCRIPT.

§ 1. *Under Lord Eldon, Equity an Instrument of Fraud and Extortion. — Samples continued.*

WHILE writing what is above, came to hand a "Review of Chancery Delays," &c.: signature, "The Authors." When what they say is seen, the reason for such their concealment will be sufficiently manifest. Read this work of theirs, whoever you are,—you who, thinking for the public, have any regard for justice: so rich the mass of abuse, it not merely denounces in general terms, but spreads out in detail, bringing it at the same time within the conception of non-lawyers: the matter ranged under some nine or ten heads, following one another in the chronological order of the proceedings in a suit.

"Proper subject of every honest man's indignation," according to them (p. 42,) not only "the system which allows," but "the judges who *encourage* such conduct:" and, with a little attention, every solicitor who has had twenty-five years' practice, and a few over, in the equity courts, as well as many a man who has had none, will be able to draw the line, and to say to himself, whether, by any former judge, anything like so much *encouragement* has been given to the sort of conduct therein held up to view. Ask, with so many learned gentlemen, whether it be to Lord Eldon, or to the system, that the phenomena are due? Ask first, whether it is to the father or to the mother that the birth of a child is due?

From this most instructive publication, take a few hastily-picked-up samples. Pages 48, 49: — 1. Master's attendance (as everybody knows) never more than one hour in one day in the same cause.

2. Between attendance and attendance, distance commonly three or four days — frequently a week.

3. For every such actual attendance, pay-

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ment for that and two others exacted by the Master, he declaring in writing that on both days he has attended; whereas on neither day has he, or anybody for him, attended.

4. For each such falsely alleged, and unjustly charged attendance, fees exacted by the Master, not only for himself, but for every solicitor employed in the suit, a separate one; there being in every equity suit parties in any number, having, as many as please, each of them a separate solicitor.

5. Hours of such attendance in a day seldom more than five (other accounts generally make it less.) Per Mr. Vizard — (see above, § 2, p. 350,) with "*some exceptions*" only, not more than three.

6. Months in which such attendances are to be had, out of the twelve, not more than seven.

Page 52. Recapitulation of the means of delay employable in ordinary, over and above the additions employable in extraordinary cases: to wit, employable by dishonestly-disposed men on the two sides of the suit respectively, thus enabled and invited by Lord Eldon, with or without predecessors for stalking-horses, to carry that same disposition into effect.

I. By dishonesty on the *defendant's* side; to which side, in a common law-suit, dishonesty is of course most apt to have place: —

	Years
1. Before the time for what is called *appearance*, (the defendant not being *permitted to appear*, but forced to employ in appearing for him a solicitor, whom, likewise, without a train of barristers to speak for him, the Chancellor will not see,) - - - - -	1½
2. By not appearing before the cause is ultimately called on for judge's *hearing*, - - -	2
3. After *hearing*, "wasted by reference to a Master, years from 4 to 6:" oftener a much longer period,	4 to 6
4. Between Master's report made, and judge's second hearing, -	2 to 3
Total, -	9 to 12½

II. By dishonesty on the *plaintiff's* side; that is to say, on the part of him who, at common law, had been on the defendant's side; one half of the business of equity consisting in stopping or frustrating the application of the remedy held out by common law; and at any stage, down to the very last, this stoppage may be effected.

N. B. This combination of two sorts of judicatories, proceeding on mutually contradictory principles, is by Lord Eldon, and by so many others, professed to be regarded as necessary to justice.

	Years
1. By amending bills, from -	4 to 6
2. Between the suit's being *set down* for hearing by the judge, and its being by that same judge *called on* for hearing, - - -	2
3. After hearing, wasteable in reference to a Master, as in the defendant's case, as above, from -	4 to 6
4. Between Master's report and judge's second hearing, as above	2 to 3
Total, -	12 to 17

Note that (as has been often stated, and never denied,) delay on the plaintiff's side, as here, has been in use to be employed as a regular and sure source of profit by dishonest men with other men's money in their pockets, where the quantity of it in the shape of capital has been deemed sufficient, by means of the interest or profit on it, to pay for the delay sold by the judges of the common law and equity courts together: they, with their creatures and other dependents in office, and their friends and connexions in all branches of the profession, sharing, by means of the fees, with these dishonest men, in the profit of their dishonesty.

Comes in, at the same time, "Letter to Mr. Secretary Peel on Chancery Delays, by a Member of Gray's Inn." Pages, 25.

I. Page 20. Subject-matter of the most common and seldomest-contested species of suit — account of a testator's estate: —

1. Number of useless copies taken of said account, ten.

N. B. Cost of each, ten-pence for every ninety words.

2. Pages 15, 16, 17. Under Lord Eldon, irrelevance, technically styled "*impertinence*," thence useless lengths of pleadings perpetually increasing — "laxity of pleadings, quantity of impertinent matter — a subject-matter of general complaint and general observation *by Lord Eldon*." Punishment being all this while unexampled; encouragement in the shape of reproof in the air, or threats, of which it is known they will never be executed, are at the same time frequent. Before Lord Eldon, the practice was, to saddle the counsel with costs. Per the authors, as above (p. 350,) by "*late decisions* this abuse has received positive encouragement and increase."

Pages of all five pamphlets, taken together (Mr. Vizard's included,) 157. Compressed into perhaps a third of the number, the substance would compose a most instructive work. By detaching from the abuses the proposed remedies, the compression might perhaps be aided: the remedies, in a narrow side column, or at bottom, in form of notes.

But neither should the defences, whatever they are, pass unexamined: for of the charges,

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with such premiums for defence, whatsoever is passed over unnoticed or slurred over, may, with unexceptionable propriety, be regarded as admitted.

§ 2. *Lord Eldon Squeaking.*

Drama (not to say *farce*,) "*The Courts of Law Bill.*" Time, June 28, 1825. Editor, *Globe and Traveller*. Scene, Right Honourable House. Enter Lord Liverpool, Prime Minister, bill in hand. Lord Eldon, Chancellor, in the back ground. Motion by Lord Liverpool for proceeding in the bill. Enter Lord Grosvenor with a digression — a dissertation on sinecures: Lord Liverpool, in answer: — determined to save fees from commutation during the incumbency of the present incumbents; determined to save the head fee-eater from all hardships imposed on inferior ones: determined to give the puisne judges the proposed £5500 a-year, because there were others, who, for doing less, were paid more. Mr. Robinson having previously (to wit, in Honourable House) demonstrated the necessity of the increase, appropriate aptitude being, in his mathematics, as *dignity*, and *dignity as opulence*: the proof being composed of repetitions, ten in number (for they have been counted,) of the word *dignity*.

Whereupon, up rises Lord Eldon, finger in eye, answering Lord Grosvenor's digression, with a digression on calumny and firmness. Addresses, two: one to the people, the other to noble lords. For better intelligibility, behold these same addresses, in the first place, in plain English: after that, for security against misrepresentation, in Lord Eldonish.

1. *Lord Eldon to the people, in plain English.*—Have done! have done! Let me alone! Nay, but don't teaze me so. You had best not; you won't get anything by it. This is not the way to get me out, I can tell you that. Come now, if you will but let me alone, I'll go out of my own accord. I should have been out long ago, had it not been for you. It's only your teazing me so that keeps me in. If you keep on teaze, teaze, I'll never go out: no, *that* I won't.

Note that this was on the 28th of June 1825: ten days after the day on which, without authority or expectation on the part of the author, the editor of the Morning Chronicle, with whose stripes the noble and learned back is so well acquainted, had given an article on these *indications*.

*The original in Lord Eldonish.**—"Perhaps it is thought that this mode of calumnious misrepresentation is the way to get me out of office. They are mistaken who think so: I will not yield to such aspersions; nor shrink from asserting what I owe to myself. Had I been treated with common justice, I should not, perhaps, have been Lord Chancellor this day; but, I repeat it, I will not be driven out of office by calumnious attack. Let me only be treated with common justice, and my place shall be *at any man's disposal.*"

Calumnious indeed! Look back, cautious and justice-loving reader — look back at the *indications*: see what any of them want of being *proofs*: see whether anything but a formulary or two is wanting to render them proofs, and conclusive ones. Suppose, for argument's sake, the defendant guilty, and see whether, on that supposition, anything more convincing than what is there brought to view, could have been adduced. Say whether, in case of mis-statement anywhere, there can be any ground for regarding it as wilful: any ground for attaching to it any such epithet as *calumnious*.

2. *Lord Eldon to Lordships in plain English.*—Help! help! help! Going, going! Can't stand it any longer. What! nobody lend me a hand?—nobody speak a word for me? Do not you see how it is with me? What! and will *you* turn against me? Better not: I can tell you *that*. You'll be all the worse for it. When I am put down, it will be your turn next. What will become of your privileges? — think of that! I'll tell you what, so sure as they take away my seals, so sure will they take away your privileges.

Squeaking, staggering, blustering, crying out for help — all in a breath! What an exhibition!

Original in Lord Eldonish.—"The feelings and fate of an individual are in themselves of small importance to the public, and I may be sacrificed to the insults I daily receive. But I beg noble lords to reflect, that I may not be the only sacrifice. If the object is, as it appears to be, to pull down the reputations, and throw discredit on the motives and conduct of men in high official situations, — if every man who occupies a high situation in the church" [turning of course to the bishops' bench] "in the church or state, is to become the object of slander and calumny, then your lordships may lay your account with similar treatment, and be convinced that your privileges or power cannot long be respected, when such characters have been sacrificed."

N. B. At what words the tears began to flow is not reported. When a crocodile comes on the stage — *Tears, tears*, should be added to the *Hear! hears!*

No, my weeping and fainting and firmness-acting lord. How purblind soever the eyes you are accustomed to see around you, blindness is not yet so near to entire, as to make lordships see no difference between your seals and their privileges. Their privileges! Who is it that is to take away these same privileges? The king? or the people? or the pope

* For greater fidelity, and to avoid some circumlocutions, the third person is here all along retransmuted into the first.

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of Rome? Your seals! Yes, the king can take away these pretty playthings of yours, and not improbably will, so soon as in his estimation there will be more uneasiness from keeping them where they are, than from placing them elsewhere. But Lords' *privileges!* they are a sort of a thing not quite so easily disposed of. To bring his hand in, his Majesty will first take away from himself his own *prerogatives*.

The people? Yes: supposing guards and garrisons were all annihilated in a day, the people, that is to say, a mob, might not find much more difficulty in dealing with these accoutrements of yours than the king would: after burning your bags, they might throw your seals into the Thames, where your predecessor, *Littleton*, threw his. Yes: all this a *mob* (for this is what you always have in view when you speak or think of the people) might indeed do. But could they either burn or throw into the Thames their Lordships' privileges?

As to the Pope, I say nothing of him here: what regards him, belongs to Catholic Emancipation.

Seriously, it was found impossible, by anything but extravagance, to comment upon such extravagance. What must have been the state of that mind which could rely upon it as argument?

In this place, without aid either from witchcraft or from treachery, I had actually gone on and given the substance of the argument, with which, in cabinets and over bottles, the noble and learned lord has for these five-and-twenty years, and more, been occupying himself in the endeavour — no very difficult one, it must be confessed — to keep up, and if possible to increase, the aversion to improvement in so many shapes, and to reform in every shape. But relevancy seeming questionable, and mischief from overweight unquestionable, the papers have been put aside.

The *Indications* are before the reader: some original, others copied. In both cases, how determinate they are, he can scarcely have failed to remark. As well as the proofs, he shall now have before him the answers. From a clear conscience, accompanied by a clear and well-exercised conception, *they* would have been correspondently determinate. In generals, at any rate, and in particulars, according as time and occasion admitted, and importance required, every charge would have been noticed; and, lest omission should be taken for confession, no one left altogether without notice.

So much as to what the answers might have been, and, in the momentarily supposed case, would have been. Behold now what, in the actual case, they are.

First, as to the general heads of defence. They will be found composed of uncharacteristically-vituperative matter, applied at every turn to the accusations, and expressed in these terms: —

1. "Misrepresentation and calumnies."
2. "Calumnious misrepresentation."
3. "Such aspersions."
4. "Calumnious attacks."
5. "Mis-statements and misrepresentations of every kind."
6. "Much misrepresentation."
7. "Calumny and mis-statement."
8. "Slander and calumny."

What the noble and learned defendant's perturbation did not permit him to perceive is, how strongly this sort of language smells of "*the Old Bailey:*" of the place he was looking to be "sent to by their Lordships," (as per *Globe*, June 21, 1825,) there to be "*put to death:*" and that when a man can find nothing to say that shall tend to his exculpation, this sort of unmeaning outcry is what he vents his anguish in, rather than be seen to make confession in the shape of silence.

So much for generals. Follow now all the several specific attempts at defence, with an observation or two upon each.

Lord Eldon. — I. "From the accounts which have been furnished to me of my emoluments as Lord Chancellor from those who best know the amount," [Lordship himself being nobly careless of all such things] "apart from my income as Speaker of the House of Lords, I am happy to say, that the Lord Chief-Justice of the King's Bench has received a larger sum from his office: I speak from the average accounts of the last three years."

Observations. — 1. What is this to the purpose? Not of the *quantum* do we complain, but of the *sources:* of which sources he dares not say a syllable.

2. Whatever it be that you receive, is it the less because you receive it from a number of *places* instead of one?

3. Of the patronage, nothing said: whereas, from a small portion of it, you receive, in the person of your son, according to the undisputed calculation of Mr. Miller,* £3,500 a-year, and, unless in case of untimely death, will receive in the whole, £9000.

4. What is it to the purpose what the Chief-Justice has? If the emolument of the man in question is excessive, does the greater excess of another man's make it *less* so?

5. Since he knows, then, what his emoluments are, why will he sit to be thus badgered, rather than produce them? Why, unless it be because they would be seen not to agree with the account thus given of them? and because he fears that, if honourable gentle-

* "Inquiry into the Present State of the Civil Law of England," pp. 79, 80.

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men knew the whole amount, they would grudge giving him full value for it?

LORD ELDON. — II. "And I will further say, that, in no one year since I have been made Chancellor, have I received the *same* amount of profit as I enjoyed while at the bar."

Observations. — 1. The *same?* No, most probably not; for, so long as there is a farthing's-worth of difference, this is strictly true. But how is anybody to know whether it is?

2. If everybody knows it, what would it be to the purpose?

3. While the Chancellor declares himself *happy* that the Chief-Justice's profits out of other men's misery are so great, may a suitor be permitted to confess himself not quite so *happy*, that Barrister's profits, drawn by insincerity out of the same impure source, are, if so it really be, so enormous?

LORD ELDON. — III. "Had I remained at the bar, and kept the situation I held there, I solemnly declare I should not have been a shilling the poorer man than I am this moment, notwithstanding my office."

Observations. — 1. Believe who can: evidence, none. Disprobative counter-evidence, as to the official side of the account, obstinacy of concealment: evidence, circumstantial indeed, but not the less conclusive.

But, possibly, here as before, of his cluster of offices, with their emoluments, he shuts his eyes against all but one: and thus, by a virtual falsehood, thinks to keep clear of a literal one.

2. Again—what is all this to the purpose?

Oh! had he but kept to the bar—or, instead of the bench, been sent to that bar to which, as above, he so lately looked to be sent by their lordships on his way to another place—what a waste of human misery would have been saved! of human misery, for which who ever saw or heard him exhibiting any the slightest mark of regard? Men, women, and children—widows and orphans—being treated by him as if composed of insentient matter, like the stones from which the gold exacted from them was extracted.

LORD ELDON. — IV. "No charge of delay can fairly be brought against me."

Observations. — 1. Now well done, Lord Eldon! To a host of witnesses, continue to oppose a front of brass!

2. Not to speak of the mountains of manufactured delay opened to view by the samples, as if by a particular providence,—in opposition to this plea of *not guilty*, behold, prepared by anticipation, six months antecedently to the pleading of it, a special piece of criminative evidence: a statement, the manifestly trustworthy result of a course of observation, the commencement and continuance of which was a phenomenon not much less extraordinary than the course observed upon. It is here copied, word for word, from a morning paper.* Whence it came from, is unknown: neither to the whole, nor to any part of it whatsoever, has any contradiction been ever heard of.

3. Under the eyes of so vast a posse of retainers, retained by every tie of interest in the defence of this giver of good gifts,—is it in the nature of the case that anything to which the name of misrepresentation could have been applied with any chance of being regarded as properly applied, should in all this time have passed unnoticed?

"COURT OF CHANCERY.—*(From a Suitor.)* — Term ended on Monday: the Lord Chancellor, when he was rising, apprized the gentlemen of the bar and the suitors of the court, that he would not come down till Thursday. His lordship is no doubt entitled to two day's recreation after his learned labours of a month. In order that the public may duly appreciate those labours, let us briefly review them: — the calculation may appear curious — the time which his lordship sat — the number of cases *heard* — not *decided* — and the *quantum* of relief afforded.

"His lordship commenced his sittings on the 1st November, and from that to the 29th, both inclusive, he sat in court 24 days. In no day but *one*, did he sit before *ten* o'clock; on *one* day only did he remain till *three:* indeed he could not during term, for, as he has often said, '*the students should have their dinner.*'

"His lordship, out of the 24 days, spent in court 79½ hours!!

For 4 days he sat	4½ hours each, equal to	18
For 6 ditto	4	24
For 8 ditto	3¼	26
For 4 ditto	2¼	9
For 2 ditto	1¼	2½
24 days.	Hours,	79½

"This statement is correct, if the court *clerk* can be depended on. On two of those short sitting days, his lordship had to attend in council to hear the Recorder's report of the Old Bailey convicts; on another of them, he rose before twelve o'clock, in indignation that there was *no business:* — No business in Chancery! On some of the other short days, he was called on *business elsewhere*. But let us now see how this time was occupied.

"The case of the *Rev. A. Fletcher* is entitled to the first place in this enumeration. Indeed the flight of Paris *with* Helen was not destined to give more employment for the Grecian heroes, than the flight of Mr. Flet-

* *Morning Herald* Thursday, 2d Dec. 1824.

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cher *from* his Caledonian lassie is to cut out for the gentlemen of the long robe: thus may we fairly exclaim, — *Cedant arma togæ!* In the King's Bench we had only a skirmish, from which the parties retired *æquo Marte*. The great fight was reserved for the arena of Chancery: for four days the contending parties fought, and four times did night, or preparations for the students' dinner, put an end to the contest. On the fifth day, — after hearing from eight counsel nine speeches, the reply included, — his lordship decided that he would not become an officer of police for a Scotch synod, to pull the reverend preacher from the pulpit.*

"This case consumed 17 hours out of 79½. But is it decided? No — the contrary, for his lordship more than once intimated 'that, *if* it were worth while by a longer term of suspension to bring the question before the court in a *more regular form*, his opinion *might* incline the *other* way.' His intimations will not be lost on the synod; therefore, Mr. Fletcher, that you may not be pulled down by the skirts, you had better, like *Mawworm*, wear a spencer.

"Fourteen hours more were consumed, from day to day, in two cases which were new to the court. These were — petitions, from *Latham* and *Abbots*, bankrupts, praying that his lordship, by virtue of the enlarged jurisdiction conferred on him by the new bankrupt law, would grant them their certificate, which the required number of their creditors refused. His lordship, after many observations, referred one to be re-examined by the commissioners; and, to determine the fate of the other, he demanded more papers. The cases of these parties are therefore *in statu quo*, and we are again fated to listen to half-a-dozen long-winded orations.

"Next after these in point of duration, is to be placed the motion to commit the *Glamorganshire canal proprietors*, for violating his lordship's injunction. After hearing eight counsel for ten hours on different days, his lordship decided that four of the defendants were not to be committed; but the liberty of fifth is *adhuc sub judice*. To balance the mildness of the judgment with a sort of trimming policy, vengeance was denounced against the refractory *watchmen*; therefore *they* had better look sharp. *Discite justitiam moniti, et non temnere.*

"We have now accounted for 41 hours out of the 79½. Of the rest, the old cases of *Grey v. Grey*, and of *Garrick v. Lord Camden*, in which no progress was made, took up 5 hours; 5 more were devoted to *Hale v. Hale*, to determine the sale of mother's estates, to be commenced *de novo*; and 10 from day to day were given to the *Attorney-General v. Heales; Sims v. Ridge;* the matter of *Bayles*, and the matter of *Blackburns;* to *Honey v. Honey, Wilcox v. Rhodes* — appeals from the Vice-chancellor, in the latter of which *his honour's decree* was pronounced to be '*nonsense incapable of being executed.*' Not one of them is a jot advanced.

"*Lunatics* and the *elopement of a ward*, took up 2½ hours. The *New Alliance company* took up 3: and then 9 more were wasted in disputes between counsel and court about priority of motions.

"The opening of the eternal *Opera House* cases (of which there are now three) took up 3 hours, and the remaining 7 were consumed from time to time on bankrupts' petitions, and miscellaneous orders.

"To recapitulate the whole, the business and time are balanced thus: —

The Attorney-General *v.* the Rev. A. Fletcher, ...	17
Ex parte Latham *in re* Latham and Parry, bankrupts, and ditto Abbots *in re* Abbots and Abbots, ditto,	14
Blackmore *v.* the Glamorganshire Canal company, ...	10
Grey *v.* Grey; Garrick *v.* Lord Camden, and Hale *v.* Hale, . .	10
The Attorney-General *v.* Heales; Sims *v.* Ridge; *in re* Baylis, and *in re* Blackburns, with Honey *v.* Honey and Wilcox *v.* Rhodes, . .	10
Lunatics, Elopement of Ward, Alliance Company, and disputes about priority of motions, ...	8½
The Opera House cases, ...	3
Miscellaneous, ...	7
	79½"

LORD ELDON.—V. "It is a mistake to suppose, that because the drudgery of some offices is performed by deputies, they are therefore to be called sinecures."

Observations.—1. Nebulous-gas — confusion-gas — evasion-gas, from the Eldon laboratory. Eldon junior's six sinecures — four in possession; two more in reversion; — of course here in view. Never, where common honesty is an object of regard — unpunishable swindling, of indignation, — never will they be anywhere out of view.

2. Mark here the division. Business of official situation, *drudgery* and non-drudgery. Drudgery, doing the business of the office: non-drudgery, receiving and spending the emoluments of it; paying for the doing of the business (unless it be of a particular connexion) no more than a pittance, the smallest that any one can be found to take.

Note that, with few, if any exceptions, when from any one of these offices you have separated the drudgery, you have separated all

* Sarcasm and false wit, instead of calm judgment!

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the business from it. For, laying out of the case those which are *judicial*, such as the *masterships* and the commissionerships and the examinerships—the business of them amounts to little or nothing more than ordinary clerk-business, such as copying or making entries under heads: business not requiring a tenth part so much appropriate knowledge and judgment and active talent, as that of an exciseman does.

3. Note, that what his lordship here does, consists in putting a *possible* case, that those who are eager to lay hold of every supposition favourable to him and his system, may, without proof, set it down in their minds an *actual* case: an actual case, to a considerable extent exemplified; and in particular, in the instance of the rich cluster of sinecures, out of the profits of which, without troubling himself with the drudgery either of writing or thinking, his honourable son is acting the part of a fine gentleman; and, if rumour does not overflatter him, testifying filial gratitude by good dinners.

4. The *possible* case is this: — a situation in which one man and no more is placed, though the business of it is more than one man can adequately perform: the business being at the same time of such a nature, as to be capable of being divided into two branches: one, requiring extraordinary appropriate acquirements, the other requiring none beyond ordinary ones; for example, shopkeepers' clerks' acquirements. In this state of things, the extraordinary-talent-requiring part of the business is reserved by the principal official person for himself (his appropriate aptitude, considering the dignity of him of whose choice he is the object, being unquestionable:) the no-more-than-ordinary-talent-requiring part, (that, to wit, which is meant by the *drudgery*) being turned over, or rather turned down, by him to the deputy. Of the thus wisely and carefully made division and distribution, sole object, of course — the good of the service.

5. Now then — supposing an inquiry into this matter included in the inquiries of a House of Commons' committee, is there so much as a single instance in which any such over-weight of business, together with any such division made, would be found exemplified? Whoever is a layer of wagers, might, without much danger, venture a considerable one to the contrary.

6. In the case of *Eldon junior*, what I would venture to lay for is — that, of his four places in possession, there is not one, the business of which requires so much appropriate knowledge, judgment, and active talent, as that of an exciseman does; and that there is not one for which he himself does any business other than signing his name, with or without the trouble of looking over the accounts of the deputies (if in name or effect there be any) to wit, for the purpose of ascertaining whether the principal receives the whole of what is his due. And so in regard to the *reversions*: the existence of which, by-the-bye, is a separate one, and that an abominable and altogether indefensible abuse.

7. True, my Lord. An office, in which for the public service, a something, an *anything*, is done — is not in strictness of speech a sinecure: though that something were no more than any charity-school boy is equal to; and although it took up but a minute in doing, once out of each of the seven months in a-year, during which your masters (your lordship's son-in-law included) serve.

8. This being conceded to you, what are you the better for it?

Would you have the amount of the depredation exercised by the maintenance of an office allowed to be executed by deputy? I will give you a rule by which, in every case, you may obtain it. From the sum received by the principal, subtract that received by the deputy or deputies, — the difference is, all of it, depredation: of thus much you may be sure. Whether of this which the deputy or deputies receive, there be any and what part that belongs to that same account, is more than you can be sure of, otherwise than by applying to this case, that matchless criterion of due proportion as between reward and service, fair competition — competition, as in the case of goods sold, and, — under the name of *work done*, — service, in all shapes, sold to individuals: and, if good in those cases, what should render it otherwise in this?

9. Casting back an eye on the matter thus employed in effecting the explosion of the Eldon gas, I cannot but regret the quantity. If, by any instruction contained in it, the labour of looking into it be paid for, it will be by the applications capable of being made of this concluding rule.

LORD ELDON. — VI. "I will pledge myself to be as active as any noble lord in correcting abuses, but I will perform my duty with a due regard to the rights of others."

Observations. — 1. Pledge himself? Yes: but giving a pledge is one thing — redeeming it, another. In the whole five-and-twenty years, during which this has been swagging, like an incubus, on the breast of justice, in what instance has he ever meddled with abuse in any shape, unless it be by the endeavour to give perpetuity and increase to it?

Not that, as thus worded, this desire amounts to any great matter beyond what he might have credit given him for, and this without any very wide departure from the exact line of truth. Noble Lords, — if in a situation such as theirs it were possible for men to feel any such desire, — would not have far to look for the gratification of it.

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Your Majesty (said somebody once to a King of Spain who was complaining of ceremonies) is but a ceremony. Your Lordships (the same person might have said to their Lordships) are but an abuse.

As an *argumentum ad hominem*, nothing against this challenge can be said. But, the organs, for which it was designed, were the ears of noble lords, not the eyes of the public: to which, however, I hereby take the liberty of recommending it. *Abuses* are neither *hares* nor *foxes*. Noble lords are too well born, and under noble and learned lords too well bred, to take any great delight in *hunting* them.

Lord Eldon. — VII. "The reason why in the present bill there appeared no clause regulating offices in the court of Chancery is — that a commission is now sitting on the state of the court."

Observations. — 1. Now sitting? O yes, and for ever will be, if his lordship's recommendation to the people is taken by the people, and the operation of *teazing* ceases or relaxes — *Sedet, æternùmque sedebit.*

2. A commission? Yes: and what commission? A commission which never could have sat at all — which never could have been thought of at all — had it been supposed that, in either House, there exists any such sense as a sense of shame.

3. An enormous dilatory plea, set, like a gun, in a self-judication system; a transparent veil for corruption; a snug succedaneum to the still apprehended and eventually troublesome inquisition, of a not quite sufficiently corrupt Honourable House, — such is this commission: — a subterfuge, which, more than perhaps all others, has damaged the reputation of the principal, not to speak of the accomplices. In Matchless Constitution, that all-prevading and all-ruling principle, the self-judication principle, has now to that *local habitation*, which it has so long had, added *a name:* a name which, so long as the mass of corruption in which it has been hatched continues undissolved, will never cease to be remembered—remembered, in time and place, by every lover of justice and mankind, as occasion serves.

Lord Eldon. — VIII. "I am uncorrupt in office; and I can form no better wish for my country, than that my successor shall be penetrated with an equal *desire* to execute his duties with fidelity."

Observations. — 1. *I am uncorrupt!* And so a plea of *not guilty* was regarded by this defendant as sufficient in his case to destroy the effect of so matchless a mass of criminative evidence, and supersede the need of all justification and exculpative evidence!

Incorrupt? Oh yes: in every way in which it has not been possible for you to be corrupt, *that* you are. So far, this negative quality is yours. Make the most of it, and see what it will avail you. Remains, neither possessed, nor so much as pretended to, the whole remainder of appropriate moral aptitude, appropriate intellectual aptitude, and that appropriate active aptitude, without which, a man possessed in the highest degree of appropriate aptitude in both those other shapes, *may* in your situation be, *has* in your situation *been* — a nuisance.

Desire! And so, in an office such as that of Chief-Judge, and that but one out of a cluster of rich offices fed upon by the same insatiable jaws, *desire* is sufficient: *accomplishment*, or anything like an approach to it, supervaneous!

Yes: that he *does* form no better wish for his country — this may be conceded to him without much difficulty: for, whatever be the situation, when a man has been disgraced in it by inaptitude, the least apt is to him, but too naturally, the least unacceptable successor. But, as to the *can*, this is really too much to be admitted: for, even a Lord Eldon — after rubbing his eyes, for the length of time necessary to rub out of them, for a moment, the *motes*, which keep so perpetually floating in them in the shape of doubts, — even a Lord Eldon might be *able* to see that desire and accomplishment are not exactly the same thing; and that, where the object is worth having, *desire* without *accomplishment* is not quite so good a thing as desire *with* accomplishment at the end of it. Put into this Chancellor's place, his housekeeper, supposing her to have any regard for the money it brings, would have this same desire — which, except the uncorruption, is all he can muster up courage to lay claim to, and which is so much more than can be conceded to him — the desire, in respect of *fidelity* and everything else, so far to execute the duties of it as to save herself from losing it.

Next to this, comes what has been seen already in his Lordship's concluding address to their Lordships. Of the visible condition of the defendant, no intimation is given in the report: to judge from what is given, a man who could with such a peroration close such a defence, must have been at the verge of a fainting fit: in which condition he shall, for the present, be left.

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PAPER IX.—ON THE MILITIA.

(This Pape, consisting of a portion of the Constitutional Code, (viz. Ch. X. DEFENSIVE FORCE, § 3, Radicals who?) *will be found in its proper place.)*

PAPER X.

ON PUBLIC ACCOUNT KEEPING.

COMPLAINTS have of late been made, of the method at present pursued for making recordation, and appropriate publication, of the transactions of the several classes of functionaries, of whom the official establishment of the British government is composed; and of the pecuniary and *quasi-pecuniary* transactions more particularly. By high authority, it has been pronounced inadequate, and ill adapted to its professed purpose. To this, by that same authority, a substitution has been proposed, and *that* in the character of a well-adapted and adequate one. It consists in simply substituting, to the *method* and *phraseology* at present employed, the method and phraseology, which is called sometimes the *Italian*, sometimes the *double-entry* mode or system; and the use of which is confined to the case in which pecuniary profit and loss are conjunctly presented to view.

Against this change, so far as regards the use of this peculiar and technical phraseology, I protest on two grounds:—1. That, instead of being conducive to, it is incompatible with, the design which, on this occasion, whether it actually be or no, ought to be entertained; namely, that of rendering the state of the accounts in question more effectually and extensively understood; 2. That, if introduced, it would of itself produce deterioration, to an unfathomable degree, in a form of government which assuredly stands not in need of any *such* change.

These evils will, when examined, be seen coalescing into use.

First, as to the *design*. What ought it to be? Answer, as above. To render the transactions in question as effectually *understood* as may be, and to that end as *intelligible* as may be, to those whose interests are at stake upon them; that is to say, in the first place, to the *representatives* of the people; in the next place, to the *people* themselves, constituents of those same representatives.

Now, then, in respect of *intelligibility*, what would be the effect of the introduction of this same Italian mode? So far from augmentation, it would be little less than destruction: and this, relation had as well to *constituents* as to *representatives*.

Method is one thing; phraseology is another: 1. First, as to *method:* that, by means of it, any addition would be made to the number of those by whom the transactions in question would be understood, remains to be proved; no determinate reason for thinking so, have I anywhere been able to find. Whatsoever, if anything, this same addition would be, might it not, to equal effect and with equal conveniency, in every respect, be made, by the phraseology in use with everybody, as well as by that which is peculiar to merchants? With little or no hesitation I answer in the affirmative: at any rate, that which may be asserted without even the smallest hesitation is, that whatsoever may be the advantage derivable from the *method*, never can it compensate for the evil inseparably attached to the unintelligibility of the *phraseology*.

2. Next and lastly, as to the *phraseology*. To the whole community, with the exception of the single class designated by the appellation of *merchants*, this phraseology is utterly unintelligible: to all those for whose use it is, or ought to be, designed, by those by whom the substitution of it to that which is universally intelligible, is proposed: Members of

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Honourable House, and people without doors, included.

Of the number of those to whom it is unintelligible, compared with the number of those to whom it is intelligible, what is the amount? To any person whatsoever, the answer may be intrusted. Be it what it may, — say who can, that it will not suffice to ground the putting a decided exclusion upon the proposed change.

Now then for the other objection: — deterioration of the form of government. To a universally intelligible mode of giving expression, to the transactions of the functionaries of government, and in particular to the part which consists in the collection of the produce of the taxes, and the disposal made of it, substitute an almost universally unintelligible mode; what is the consequence? *Answer* — Exit Public Opinion: enter Darkness: such as that which forms the characteristic of absolute government. To Matchless Constitution may be substituted the government of Spain, Portugal, or Turkey: and this without responsibility, or danger in any shape, on the part of the authors of the change.

Obvious as these effects can scarcely fail to appear when once mentioned, to none of those persons by whom the subject has been taken into consideration do they appear to have presented themselves: neither to those by whom the change has been proposed, nor yet even to those by whom it has been opposed.

First, as to those by whom it has been *opposed*. These are — Messrs. *Brooksbank and Beltz*, two of the three commissioners for inquiry into the state of the public accounts. "*A wide difference exists* (say they) *between the business and circumstances of a trader and those of a* government department:" in the observation thus vague and unapplied consists the only objection made by them to the introduction of the Italian mode: of the distinction between *method* and *phraseology*, no intimation whatever is conveyed by it.

Next and lastly, as to those by whom the change has been *proposed*. Not without sincere regret is it, that, on this occasion, and for such a purpose, I hold up to view a production on so many other accounts so highly estimable as the work entitled "*Financial Reform, by Sir Henry Parnell, Baronet, M. P.*" late chairman of the committee on finance. *Pure*, once (p. 196,) *purest*, twice (pp. 192 and 197:) — in these two words are contained all the arguments I can find in that work, in favour of this same phraseology. "Mr. Abbot's proposal is," he says, p. 194, "to establish the Italian system in its *purest* form; and to those persons who are *practically* acquainted with the Italian system of accounts, the reasons on which Mr. Abbot founds his opinion of its being applicable to all official accounts, cannot but be," he says, p. 173, "completely satisfactory."*

"Applicable?" Unquestionably. But what is that to the purpose? Just nothing. Applicable means *capable* of being applied. But, of the truth of this proposition what need of opinion from that gentleman or anybody else, to make us fully satisfied? Applicable, or not applicable *with advantage?* — that is the question. And, to that question answer has *not* been given by Mr. Abbot; answer *has* been given *here*.

That, of the desire of these so highly intelligent and well-informed statesmen abovementioned, unintelligibility on the part of the subject-matter in question, and ignorance, next to entire, on the part of the persons in question, were not amongst the objects — I, who write this, am altogether satisfied. But of the desire of those by whom the recommendations made by the committee over which he [Sir Henry Parnell] presided were set at nought, and the existence of that same committee cut short, were or were not these among the objects? Relieved should I be from an anxiety eminently painful, were it, in this paper, consistent with sincerity, to answer in the negative.

"To bring forward a motion for the emolument of the persons in question" was, according to Mr. Chancellor of the Exchequer (if the account of the debate is to be believed,)† "*treating* them" (it should perhaps have been *placing* them) "in an invidious point of view:" — and, in effect, he, accordingly, on that same occasion, did what depended on him towards preventing their being placed in that same point of view.

But these same persons — who were they? *Answer* — "Members," says he, "of the Privy Council," — "a body composed of the Council of the Sovereign;" and afterwards, "the first judge in the land was included in it." — Prodigious! And so, in the opinion of this member of the Cabinet Council, be the man who he may, the servants of the crown have but to obtain the placing of him in a situation which affords them the means of putting into his pocket an indefinitely large portion of the produce of the taxes, — this done, nobody but themselves is to be informed of the amount of it. What the amount is of the booty thus determined to be screened from detection, the right honourable guardian of the public purse has not informed us. But if the imputation couched under the word *invidious* be all that he objects to, a sure and easy receipt

* Session of 1830. House of Commons Report, No. 159. "Copy of a letter from Mr. Abbot, late one of the commissioners," &c.

Parnell.—Purest, p. 192—Pure, 196—Purest, 197.

† *Morning Chronicle*, May 15, — debate of May 14.

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for the wiping it off is at his command. It consists — in the giving publicity to the information in question, in the instance of every public functionary without distinction.

In and by the original committee on finance, of which the late Charles Abbott, afterwards Speaker, and not long ago ennobled by the title of Lord Colchester, was chairman, extensive were the disclosures of this sort made; and, as far as appeared, in endeavours to narrow them. This was in the years 1797–1798. Thirteen or fourteen years after, came the committee on finance, of which the chairman was the still living Mr. Henry Banks, the Lord Eldon of Honourable House. From the report made by that committee, no possibility was there of learning the aggregate of the emoluments received, in the instance of any one of the functionaries occupying the situations mentioned in it: so exquisite was the ingenuity by which the deed of darkness was accomplished.

In the eyes of the right honourable persons in question, is the imputation of harbouring this same design of darkness regarded as matter of importance?—is the clearing themselves of it considered by them as an object worth their regard? The means at their command are most effectual.

For and during many years in the latter part of the last century, for the use of the directors of the life-insurance company called the *Amicable Society*, was annually published, in conjunction with an almanac, a list of the situations of which the official establishment was composed, with the emolument attached to each in the shape of salary. At present, in the annual publication intituled the *Royal Calendar*, of these situations, or at any rate the greatest part of them, a list is published; but of emolument in the shape of salary, or in any other shape, in no such publication, or in any other publication, is any mention to be found.

Now, then, by order of some one of the constituted authorities, let a complete list be published of all those several situations, with the amount of the aggregate of the emolument respectively attached to them: and to the columns in which these aggregates are inserted, let there be added another, exhibiting the total of the emoluments received by the functionary in question, from all public sources taken together; with numeral figures, expressive of the pages in which the several situations, with their respective masses of emolument, are presented to view.

Against the proposition for throwing the light of day upon this part of the den of Cacus, the only argument adduced by the right honourable gentleman is composed of the word *invidious*. In the import of this same word the idea of *distinction* is included. Do away the distinction — set fire to the gas — illuminate *uno flatu* the whole den, as above proposed — extinguished is this argument. Some dictionary, dead or living, he will have to turn over for another such.

On the present occasion, — after what has been said on the subject of *unintelligibility*, is it worth while to say anything more of that same branch of art and science (for *science* I see it called) to which the attribute of *purity* has so unhappily been ascribed? Of fiction, and nothing else, is it composed: of a tissue of misrepresentations — of departures from truth — and these not merely useless, but much worse than useless. To *things*, relations all along ascribed, of which *things* are not susceptible: to *persons*, relative situations in which, on the occasion in question, these same persons are not placed. *Wine* is said to be *debtor* to *cloth*. To what use this absurd falsehood? What explanation of anything does it give? To what human being, who has not been drenching himself with this and the kindred falsehoods for weeks or months, can it present any idea, unless it be an illusive one, unless it be translated into the vulgar tongue? True it is, that, had this locution been originally applied to the presenting to view the ideas annexed to it by the professors of this art-and-science, — it might have served as well for the purpose as does the correspondent part and parcel of the vulgar tongue: but, having once been fixed in the habit of being applied to so different a purpose, thence comes the confusion, and the useless difficulty which stands opposed to all endeavours to understand it.

So much for confusion-spreading *proposition:* now (to speak in logical language) use for a delusive *term*. Enter *waste-book, cum totâ sequelâ suâ:* — *waste-book*, a book composed of paper the value of which is that of waste-paper. To an unadept mind, what other idea than this is it in the nature of this appellation to suggest? Yet is this one book the corner-stone, on which the truth and usefulness of all the others rest: — a book, error in which infects with correspondent error all the rest: — the original, of which, though in different forms, all those others are but copies. Call this book the *original* book, those others the *derivative* books, the delusion vanishes. Call this book the *chronological*, — those others the *logical* books, the matter being traced in different *orders*, according to the different purposes, — a further instruction is afforded.

It is one of the branches of that art-and-science, which teaches how to make plain things difficult. A curious and not altogether uninstructive parallel, is that which might be made between this *regular* and *technical* mode of account keeping (for by both these epithets do I see it honoured) and the technical and regular system of judicial procedure. It would

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show to what a degree, by the leading-string held by blind custom, without any additional one tacked on by sinister interest, aberration from the rule of right is capable of being effected. Of this phraseology, if any use it have, the use consists in giving *brevity* to the mode of expression. Analogous is the use, in this case, to that of *short-hand*, as a substitute to ordinary hand, — to that of arithmetical notation as a substitute to ordinary orthography, — and to that of algebraic, as a substitute to arithmetical, notation. But small, in comparison, is the utmost service which, in this character, can be rendered by it: and on this ground, not on an imaginary one, by those who teach it, should the usefulness of it be placed.

In my *Constitutional Code* — to wit, in the already published volume of it — may be seen a section, in which, in the compass of sixty-eight pages, what is designed for an all-comprehensive set of books, for the exhibition of the accounts, pecuniary and quasi-pecuniary, of any government whatsoever, is presented to view. But for the bulk of it, it would have been included in this present miscellany. Official establishments, which it embraces in its view, are — not only those of this country, but those of any other country whatsoever.

To any attention, bestowed upon it by the only persons from whose attention to it any good to the community would ensue, — two objections there are, to the potency of which the author is duly sensible. No title had he, having the effect of a warrant from authority, for the undertaking of it. Instead of the £1600 a-year, or some such matter, from all the members of the community taken together, — 16s. from each of such of them as may vouchsafe to purchase it, is the remuneration he will receive from it: by which remuneration, in the case of this work, as in the case of almost all others by which he has endeavoured to render his labours useful to his own country and mankind, — his profits will, to a large amount, be left on the *minus* side.

Two objections there are, to its being regarded as worth the 16s. by those with whose title to receive money out of the taxes, Mr. Chancellor of the Exchequer is so effectually satisfied, by the consideration of the quantity thereof so received by them. Two objections, and each of them an unconquerable one. No such remuneration will be offered; and, were it offered, no such remuneration, — nor any remuneration, other than that which would be afforded by the acknowledgment of the usefulness of the work, — would be received.

But, let but a title, such as that of *privy councillor*, or were it even no other than that of *commissioner*, with £1600 a-year, or some such matter, be added to it — oh what a treasure it would be! Multiply the £1600 by ten, — multiplied by the same number would be the value of the work! Multiply it by a hundred, — the value would be multiplied an hundred-fold! Multiply it by 10,000, its value would outstrip that of Holy Writ; — and prostrate before it would lie the whole population of the cabinet, accompanied and sanctified by his Grace of Canterbury, and all those other paragons of piety, whose regard for that same Holy Writ is manifested by the fineness of their sleeves, and the Tyrian dye of their servants' liveries. Included are all these propositions, in that mathematical axiom, which is the key-stone of Matchless Constitution — *Aptitude is* AS *opulence.*

*** Since the proof of this sheet came in, a royal calendar has been taken in hand, of so recent a date as the year 1808; and in it are seen names of official situations, with salaries annexed, as in the case of the almanack mentioned in page 385. What was the year in which this mention of salaries was for the first time omitted, and what the state of the administration in that same year, may be curious enough subjects of inquiry.

PAPER XI.

CONSTITUTIONAL CODE — TABLE OF CONTENTS

AS SHOWN BY TITLES OF CHAPTER AND SECTIONS.

(*This will be found in its proper place.*)

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A

COMMENTARY

ON

MR. HUMPHREYS' REAL PROPERTY CODE,

BY

JEREMY BENTHAM.

FROM THE

WESTMINSTER REVIEW, No. XII., FOR OCTOBER 1826.

BEING

A REVIEW

OF

"OBSERVATIONS ON THE ACTUAL STATE OF THE ENGLISH LAW OF REAL PROPERTY, WITH THE OUTLINE OF A CODE. BY JAMES HUMPHREYS, ESQ. of Lincoln's Inn, Barrister." 8vo. Murray. London.

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*** *The following Note was prefixed to the article by the Editor of the Westminster Review:—*

[We conclude this Number of the Review with a Supplement, in a form unusual in similar periodical publications. In the conduct of this work we may lay more than an ordinary claim to the use of the personal plural, for it is rare that our opinions are not shared by the whole of our corps, and still rarer for any of our articles to reach the public without having previously passed the ordeal of more than one judgment. The following composition is published as it came from the hands of the writer; its merits are as peculiar as its style, and it would be an attempt equally vain as useless, to give to such an article a general uniform; and to attempt to conceal the individuality of the manner, if not of the matter. Holding, as we do, the intellectual qualities of Mr. Bentham in the very highest esteem, and having, during our course, invariably maintained the legislative views of this distinguished juris-consult, whom we regard as the great founder of a new and better system, it may readily be supposed that we were anxious to ascertain his opinion of a work, respecting which, from its nature and subject, he may be justly considered as the highest authority. This opinion has been communicated to us in the following form; and we publish it unchanged in the most trifling particular. If the weight which Mr. Bentham's name must carry, when thus united with that of Mr. Humphreys, accelerate in the least the progress of that legal reform which is now beginning to be so loudly demanded, we shall be pardoned for having deviated in this especial instance from the approved form of conveying the arguments of a Reviewer.—*Ed.*]

*** On the 6th June 1828, Commissioners were appointed by letters-patent, "to make a diligent and full inquiry into the law of England respecting real property, and the various interests therein, and the methods and forms of alienating, conveying, and transferring the same, and of assuring the titles thereto, for the purpose of ascertaining and making known whether any, and what, improvements can be made therein." This commission made four several reports, which were ordered by the House of Commons to be printed, of the following dates:—The first, 20th May 1829 (House of Commons Papers, 1829, X. 1;)—the second, 29th June 1830 (House of Commons Papers, 1830, XI. 1;)—the third, 24th May 1832 (House of Commons Papers, 1831-2, XXII. 321;)—and the fourth, 25th April 1833 (House of Commons Papers, 1833, XXII. 1.) In the course of sessions 1832 and 1833, several Acts were passed for amending the law of real property in England, the provisions of which were chiefly founded on the suggestions of the commissioners. They are, 2 & 3 W. IV. c. 71 (1st August 1832;) 2 & 3 W. IV. c. 100 (9th August 1832;) 3 & 4 W. IV. c. 27 (24th July 1833;) 3 & 4 W. IV. c. 74 (28th August 1833;) 3 & 4 W. IV. c. 105 (29th August 1833;) and 3 & 4 W. IV. c. 106 (29th August 1833.) In 1834, a Bill "for establishing a General Register of all Deeds and Instruments affecting Real Property in England and Wales," was introduced in the House of Commons, where the motion for the second reading was negatived on the 7th May by 161 to 45. Of the above-mentioned intended and completed reforms, it is impossible, from the extent of the subject, to give any outline, and the reader is merely referred to the most authentic sources of information on the subject, that he may be able to compare what has been done or accomplished, with the suggestions of Bentham in the following tract, and that which immediately succeeds it.—*Ed.*

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COMMENTARY

OF

HUMPHREYS' REAL PROPERTY CODE.

Of a work such as this, the publication forms an epoch: in law certainly; I had almost said in history. In possession; in expectancy; in prospect: in project — have you any property in the shape thus denominated? Deep, in proportion to the value of it, is the interest you have in this work; signal and unprecedented your obligation to the author of it. Lay even property in this shape out of the question; still, if by those on whose will everything depends, his exertions be but duly seconded, strong will be the ground you will have for felicitating yourself on the appearance of this star in the horizon of jurisprudence: for of all that is valuable to man, nothing is there to which, directly or indirectly, its beneficial influence will not be found to extend. It has, indeed, for its direct object and main subject-matter, that species alone of property to which English lawyers, and they alone, have so absurdly and uncharacteristically, instead of *immoveable*, given the name of *real;* but, for everything else, to which it is in the nature of law to afford security, — security, in a proportion as yet unexampled, — will, if his plan be carried into execution, be the effect.

Not less signal is the moral than the intellectual merit manifested by it. A young briefless lawyer, who, on a survey taken of the road to advancement, had been fortunate enough to descry this as yet untrodden track, and bold enough to enter upon it, — this was the sort of character, in which, in my imagination, the author had been pourtrayed. To one who, in the shape of *business*, had nothing to lose, — distinction, even if that were all — distinction, how barren soever — would of course have its value. Imagine, any one, my astonishment, when the information reached me, that, instead of a young adventurer, the work had for its author a man advanced in years; a conveyancer, at the very head of his profession; a reformist who, by every page written, and every hour thus spent, in an occupation not less laborious than meritorious, had thus been making a sacrifice of pecuniary interest on the altar of public good.

Proportioned to the service he has rendered to all who are not lawyers, is the ill-will which, with few exceptions indeed, if man be man, he cannot but have called forth, in the breasts of all, who, proportioned to the advancement given to the art-and-science, see, as they cannot but see, the defalcation made from the profit of the trade.

Sincere, if ever admiration was, is that which is here expressed: whether it be a blind one, what follows will soon show.

Hale, with all his merits; Hale, like all lawyers who had gone before him, and almost all who have come after him, was no reformer: nothing better than an expounder: everything stated by him was stated as he found it, or conceived it to be: no inquiries as to what it ought to be: in the eyes of lawyers — not to speak of their dupes — that is to say, as yet, the generality of non-lawyers — the *is* and the *ought to be* (or, as in Greek it would be so much better — the τὸ ὄν and the τὸ δέον, from which last, Ethics has received the more expressive name of *Deontology,*) were one and indivisible. By David Hume, in his Treatise on Human Nature, the universality of this practice of confounding the two so different objects was first held up to view.

As to Blackstone, flagrant as were the abominations, which at every page he had to wade through must have met his eye — not to extirpate them, not to expose them, was his endeavour, but to cover and preserve them; and which of the two quantities has been the greater — the service he has done to the people in the one shape, or the disservice in the other — both being to his narrow mind, probably, alike objects of indifference — is a question easier to propose than solve.

Before this work came out, *code* and *codification* were rank *theory;* theory; and, as such, objects of sincere horror, with as much of pretended contempt as would mix up with it. Now, at length, they are become *practice;* contempt has been repulsed by its own image, and *horror* has given way to praise. But now to particulars.

Law of landed property being the field, — follow eight distinguishable heads, under which, it is believed, may be ranked Mr. Humphreys' proposed improvements; some more, some less, explicitly declared.

1. Substitution of apt, to the present unapt, forms of the instruments by which landed

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property is disposed of — say, for shortness, of *conveyancing instruments*, or *formulæ*.

2. Melioration and extension of the *registration* system, as applied to conveyances.

3. In the case of *freeholds*, substitution of the generally prevalent to the anomalous courses of descent, namely, *Gavelkind* and *Borough English*.

4. Reduction of *copyholds* to the state of freeholds.

5. All-comprehensive *partition* of common lands.

6. Substitution of *a really existing code*, to the present compound, of a really existing, with an imaginary *civil*, or say *non-penal*, code of law, so far as relates to landed property. *Codification* this, in contradistinction to *consolidation*.

7. Appropriate addition to the *judiciary establishment*, in so far as may be necessary to the giving execution and effect to the *substantive* part of such proposed code.

8. Substitution of an apt, to the present unapt, system of *judicial procedure*, or say *adjective law*, in so far as necessary to that same end.

Of the separation thus made, paramount, with a view to practice, is, in my view of the matter at least, the importance. Probability of adoption and dispatch in execution join in the requisition, that, of so vast a whole, the number of separate parts be maximized. 1. *Probability of adoption:* because, let the whole plan contain, say two parts, both of them beneficial to the universal interest, but opposed respectively by two distinct particular and thence sinister interests, — one of these interests — not by itself, but with the addition of the other, being strong enough to throw the plan out, — one of them may, notwithstanding the opposition, be carried into effect: whereas, if the separation had not been made, both sinister interests would have stood opposed to it, and there would have been an end to it. Thus stands the matter, in the case of *two*, and no more than two, mutually unconnected sinister interests; but, the greater the number of them, the smaller will, by the supposition, be the number of the individuals united in opposition by each; and the greater, accordingly, the number of universally beneficial arrangements possessing a chance of being carried into effect. For want of such separation, — many are the salutary arrangements which, if separately proposed, would have found no opponent, but which, by being conjointly proposed, have been lost.

Then as to *dispatch:* if appositely made, the further the separation is carried, the greater the number of appropriately apt hands, or sets of hands, among which it may be distributed.

Then again as to *appropriate aptitude:* the further the separation is carried, the greater the chance of finding a hand, or set of hands, in a superior degree apt, each of them for one part, though they would not respectively have been equally so for any other.

Now for the application. I. Improvement the first. *Substitution of apt to unapt formulæ.* To this I allot the first rank. Why? Because least unlikely to be adopted, and most speedily capable of being effected.

Take any one of them, for example. In so far as, for its being employed and carried into effect, it requires not any alteration in the existing tenor of the statute law, or in the course of judicial practice, — it is capable of being carried into practice by the philanthropist himself, by whose ingenuity it has been devised: and, the greater the number of the improvements thus happily circumstanced, the more extensive will be the number of them effected by this most simple of all means.

Unhappily, by this alone, without assistance from statute law, not very extensive, it is feared, can be the effect produced. At any rate, for each distinguishable improvement, the less the assistance needed from that so difficultly-moved machinery, the better the chance.

Of the load of evil in all shapes with which the instruments in question are oppressed, — *lengthiness* to wit, thence *unintelligibility*, *expensiveness*, and *dilatoriness* — of all this evil the main efficient causes are shown to be composed of the work given to needless and useless trustees, in whom no confidence is reposed, and the addition of the blind agency of judiciary functionaries to the mental labour of professional draughtsmen, in the fabrication of the mendacious and pick-pocket instruments rendered necessary, under the name of *fines* and *recoveries*. True it is — *this* mass of abuse could not be cleared away by any other hand than that of parliament. But, by that of any professional draughtsman, not inconsiderable are the improvements that may be introduced: the endless sentences at present in use may be broken down, and reduced to the scantling of those employed, on the like occasions in every other country, and on all other occasions in all countries: — for the purpose of enabling the most unpractised eye to see its way clearly over the present labyrinth, and take repose wherever it found need, — the several topics, distinguishable in those huge masses of matter, which in the present practice are compressed together into the compass of one sentence, may be presented to view by their already universally known denominations: the matter, belonging to each such topic, may be formed into a separate sentence; and to each such sentence, to save the need of repeating it *in terminis*, or by a little less lengthy general description, a numerical appellative may be allotted. Of the general indication thus given, exemplification, and thence

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(it is hoped) elucidation, will be seen in the course of the ensuing pages.

As to the clearing the system of the other more highly morbid symptoms, — I am but too sensible how far, even with these additions, his plan of operation would fall short of meeting the disorder with anything like an all-sufficient remedy. Still, however, I see in it the least unpromising of all his generous enterprises. In respect of the force of the sinister interests it would have to encounter, it stands less unfavourably circumstanced than any other. By rendering conveyances, and the contracts embodied in them, somewhat less unintelligible to parties and other *interessees*, — it would lessen the mass of suffering in the shape of disputes and disappointments, and in so far lessen the abundance of the lawyer's harvest: it would reduce, in some degree, the profit of the conveyancers' company, — and of the firm of Eldon and Co. in Chancery and the House of Lords: but it would not, as any system of procedure capable of fulfilling its professed end would, go to the blowing up the manufactory of factitious litigation at one explosion, — and, at the first proposal of it, call up, in defence of Matchless Constitution, that judiciary system by which, to ninety-nine hundredths of the people, access is denied to so much as a chance for justice.

II. Improvement the second. *Giving efficacy and extension to Registration.* For this purpose I shall have to treat our artist with a sight of an instrument (a fruit of female ingenuity) suited to this one of his beneficent purposes, in a degree beyond what he can have had any conception of.

III. Improvement the third. *Abolition of the anomalous courses of Descent.* Absolutely speaking, yes: but comparatively speaking, no great good seems here to be expected: on the other hand, no great resistance to be apprehended.

True it is, that this improvement, the subject-matter of it being an insulated one, is in its nature capable of being carried into effect by itself. But, setting aside the supposition of an all-comprehensive code, — or at any rate an all-comprehensive *property code*, — the benefit produced by it would be comparatively inconsiderable; its principle, if not only one, being that which it would have in the character of an instrument of simplification.

IV. Improvement the fourth. *Reduction of Copyholds to the state of Freeholds.* Highly beneficial this: but at the same time unavoidably operose and tedious. The sooner indeed it were begun, the better; but, in no other shape need, or should, the commencement of the course of improvement wait either for the consummation or the commencement of it. Pride would set in array against it the aristocracy of the country, in their character of lords of manors: pecuniary interest, the lawyer-class in the character of stewards: not but that, in the long-run, pecuniary compensation *ab intrà*, with or without a little of ditto *ab extrà*, — at the expense of the whole community, to whom the whole rule of action would thereby be rendered so much the more accessible, — might peradventure gain the votes of the one, and quiet the alarms and clamours of the other.

V. Improvement the fifth. *Partition of Common Lands.* To a certain extent, this improvement is comprised in that which consists in the conversion of *copyholds* into *freeholds*: to a certain other extent, that is to say, in so far as the land is already in a state of freehold — or, being copyhold, can be divided into separate parcels, leaving the manorial rights in other respects untouched, — it will require the arrangements, for the effectuation of which the *general inclosure act* was intended, and the several particular inclosure acts have been, and continue to be intended. As to this matter, true it is, that the greater the degree in which the provisions of the particular acts can be generalized, and those of the general act improved upon, of course so much the better: and propositions for this purpose may of course be expected from the ingenuity, experience, and public spirit of Mr. Humphreys. But, in addition to *those* efficient causes, others of a peculiar nature, and not quite so prompt in growth, are required; that is to say, *capital* in proportionate quantity — *capital* in the appropriate hands — and a state of things such as will admit of the giving to it the direction in question to advantage. Now, as to *capital*, it cannot be made to accumulate in, or find its way into, these same hands, with quite so much celerity as may be given to the operation of drawing up an act of parliament: and a state of things which affords probability to the opening of the trade in corn to foreign cultivators is but little favourable to increase in the home-production of it. Not that, by these circumstances, any objection is opposed to that part of our learned reformist's plan which consists in the procurement of the appropriate mass of *information* subservient to these same purposes. But of that in its place.

VI. VII. VIII. Improvement sixth, seventh, and eighth — *Codification.* Substitution of really existing law to fictitious: Substitution of an apt to an unapt judiciary establishment and system of procedure: as to these three parts in conjunction, there will be more or less to say before this article is at a close.

Now for a trespass on his patience. The time is come, when the scalpel must be set to work: state of it much rougher than the anatomist could have wished: but neither time nor space admit of that smoothness which would otherwise have been endeavoured to be given to it. More than fifty

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years ago, I took it up for the first time, with Blackstone lying on the table. The subject being so different, it is with affections correspondently different, and proportionable reluctance, that I take it in hand now. In Blackstone, every abuse has its varnish or its apology: in Humphreys, none. Should the liberties now taken have any such effect as that of calling forth like for like, my gratitude will not be less sincere than my admiration is now.

Observations applying to all three formulæ viewed together, are the following: —

I. *Emendandum the first. Subject-matter, length of each one of the three pattern instruments, and symmetry as between the three:* Description of the subject-matter of disposition insufficient, and thence, at the same time, by the whole amount redundant and useless. Of the subject-matter of a *sale*, the number of diversifications being, practically speaking, *infinite* — no one can, with propriety and safety, be taken for, and thence copied as, the representative of *any* other: much less of *all* others. In each instance, what should be given is — in the body of the instrument, a generic designation, as short as possible so as to answer the purpose: in the *schedule* (a sort of appendage referred to, but not exhibited in the author's draught,) a description, the particulars of which must, in the nature of the case, be all of them *individual*. Of a building, for example, the *generic* description will, of course, be of one sort; of a piece of land, of an altogether different sort. As to the individual description — for the purpose here in question, in addition to other purposes, all *habitations* should be *numbered*. For the process of enumeration, an all-comprehensive plan may be seen in my parliamentary reform bill. Of a piece of land, on which there is no building, the description of the *site* will be given, by giving the name of the nearest road, with the several names of the several fields of which it is composed. In respect of the piece of land, there can be no difficulty: since, in fact and of necessity, in whichever way held, whether in commonalty or in severalty, every field has its name. Of the compound subject-matters, composed of buildings with land annexed, the mode of description is rendered familiar to everybody by those printed *papers of particulars* which are employed on the occasion of sales, whether made by auction or by hand.

Behold here, then, already drawn, though by an intrusive hand, the proper contents of the *schedule:* say, rather, the *only* proper. For, what other description of the subject-matter can be so proper for a deed of sale, as the very one to which, by the agreement to purchase, the purchaser had given his assent?

But, the knot of lawyers must be paid — paid, for doing, in not improbably a bad manner, what has been already done in the best. If, for appropriate accuracy, the scientific eye affords a promise of being of use (and I do not say but that in some instances so it may be,) the proper time for its operation is *antecedent*, not subsequent, to the adjustment of the subject-matter of the conveyance — the *paper of particulars*.

If this be so, useless then is every syllable occupied in individualizing the subject-matter in the body of the deed.

Behold now the quantity of surplusage thus employed; employed in giving to conception difficulty, and to expense increase. In the deed of sale, lines 16, whereof surplusage in this form, 5: in the mortgage-deed, lines 19, whereof surplusage in this form, 11: in the marriage-settlement deed, lines 96, surplusage in this form, 11: lines in all three together, 131: whereof surplusage in this, besides other forms, 27.*

Now as to length of *sentences*, separately considered. The more lengthy the sentence, the greater the fatigue of him whose misfortune it is to be subjected, on one account or other, to the obligation of reading it and lodging the contents in his mind. When the fatigue rises to a certain pitch, — such is the reader's anxiety to reach the end of his labour, — that, for want of a resting place, he slides over the topics, without dwelling upon any of them the length of time necessary to the impregnating his mind with an adequate conception of it: on the other hand, let it be broken down into its several distinguishable topics, — so many topics, so many sentences; so many sentences, so many resting-places: and whatsoever topic requires particular consideration, will be considered at full leisure: on time wasted in disentangling it from the rest.

What is more, no danger of the draughtsman's own mind losing itself in the mizmaze. This apprehension — is it a fanciful one? In proof of its well-groundedness, I call two witnesses: one of them, our learned reformist himself, the vast reduction, made by him in the extent of the labyrinth, notwithstanding; the other, no less a personage than a learned lord, the Lord Advocate of Scotland.

1. Enter, first, our learned author. — Evidence of bewilderedness, an offence against the laws of Priscian. *Locus delicti*, Family Settlement Deed: — *Corpus delicti* (as the Romanists say,) the words "*convey, charge*, and *settle*." The loves of the *parts of speech* are no secret to any boy, who, in any one of the royal schools, has been initiated in the gymnastic exercise, of which a poetical grammar is the instrument. Here, so it is, that, to enable them to beget a meaning, the three amorous *verbs* require, each of them in the shape of *a preposition*, a different mate: *convey, to; charge, with; settle, on*. Now, then,

* These proportions are printed as in the first edition; in the present, the number of lines in each deed being respectively 24, 27, and 131, the number of surplus lines will be correspondingly increased. — *Ed.*

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as to the fate of these same lovers. After a long and adventureful period of unsatisfied desire, burning, in one instance, through a course of not fewer than 15 out of the 96 lines, *convey* is at last made happy in the embraces of his dear *to; charge*, in the arms of *with*. Not so with the luckless *settle*. In vain has the wood been hunted over for a mate for him; no such comfort for him is to be found, and he dies childless.

Not that *Miss Campbell*, for whom the benefit, attached to the burthen conveyed by the verb *charge*, is intended, — is, at the end of the story, disappointed of it; for, in a recess of the wood (candour requires the confession) the preposition *to* steps in at last, steps in a second time to her assistance; and her two hundred a-year pin-money, and five hundred a-year jointure, form the result.

2. Enter now *Lord Advocate*. — If a warrant, — from practice, power, and dignity, in high situations, — can afford consolation under the imputation of a grammatical peccadillo, the learned delinquent needs not be inconsolable.

Opening the House of Commons folio, entituled "Return, Parochial Education, Scotland, Order for Printing, 27th February and 21st May, 1826," you will find it written in page 3, "Letter from the Lord Advocate of Scotland to Henry Hobhouse, Esq." Follows here what is relevant to the present purpose; what is not relevant being eliminated.

"I had the honour to receive your letter, stating, that the king, having been pleased to comply with an humble address *for*" (the letter-press is thus italicized) "an account showing," (then follows the matter of a folio page) "and desiring" (mark here the king, instead of *commanding* — Oh! treason! *desiring* — deprived of all command, and reduced *to desire!*) "desiring that I would take the necessary steps 'for *procuring*, &c. and transmit, &c., that it might, &c. previous to being laid before the House of Commons.'" Well — the king having been pleased, what then? Nothing. For at the word *Commons* ends the paragraph, closed by a full-stop. Then comes the next, beginning with "I beg leave to state that, in obedience to the above order, it had occurred to me," and so forth.

Now, as to the effect produced on the faculties of the pre-eminently learned composer, by the folio page — the unbegun and unended sentence which, lest the like effect should be produced on the mind of the reader, is here omitted. — Such is its narcotic quality, that while dragging on with it, he falls asleep, and in the course of his sleep dreams of a certain "order," to which he is rendering obedience. Rubbing his eyes, — "the above order," cries he. — Order? *What* order? Look the whole page through, no such thing as *an order* will you find.

II. *Emendandum the second: in the three patterns taken together, another feature of redundance: and the redundance pregnant with error on the part of learners.* Of the particulars in question, the tenor different in each species of deed: yet, whatever is capable of being taken for the subject-matter of a marriage settlement, is alike capable of being taken for the subject-matter of a sale, or a mortgage. Evil effects three: 1. Error liable to be produced in the minds of learners, in supposing the general necessity of the difference exhibited in the individual case; 2. and 3. Perplexity, and waste of labour, in examining the three, to ascertain whether such necessity has place. Sharers in these dangers, non-lawyers all: law-students as many, and tyro-lawyers not a few.

Note that, on the author's own plan, — between the two species of dispositions, there are but two points of difference: one is — *that*, to which expression is given, by the substitution of the word *charge* in the deed of mortgage to the word *sell* in the deed of sale: the other regards the mode and result of the re-payment to be made of the money lent. Had the exhibition been thus confined to the points of difference, would not the aid given to conception have been rather more effectual? Of needless diversity, another bad effect is — the distracting the attention from the needful. "*Eadem natura, eadem nomenclatura.*" (Same the ideas, same the words should be.) In contemplation of the above inconvenveniences, this rule has been ventured to be delivered elsewhere. If it be worth remembering, the jingle in the Latin, the metre in the English, may have their use. In composition for ordinary purposes, the opposite propensity is in these days prevalent: when the import meant to be conveyed is the same, to find for each occasion a different expression, is the task the writer sets himself. Harmless, when clear and muddy, right and wrong, are matters of indifference: Not altogether so in legal instruments, on which every thing that is dear to man depends.

III. *Emendandum the third. Sentences more lengthy than necessary.* Lengthiness of the whole of a discourse is one thing: lengthiness of these its component parts, another. Of the lengthiness of the whole, consequences such as have just been seen, are the result. Lengthiness of the parts separately considered is the imperfection now more particularly meant to be brought to view. By the manner of printing, it looks as if the reduction of the apparent, superadded to that of the real, length of the *whole*, had been among the objects of our learned reformist's ambition.

As to paragraphs, in no one of the three instruments does the letter-press exhibit the appearance of more than one. True, as to sentences, in the *deed of sale*, you might, if

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hard pushed, make any number, from *one* to *five*, according as you pointed the paragraph: though by the punctuation *one* only is *there* exhibited. But, in the *mortgage deed*, which in the length of the whole is much the same as that of the other, you cannot make more than *one*.

As to the *marriage-settlement deed*, not a single resting place was I able to find, till I came to the word *Allen* in the *second* page, line 24:* quantity of matter travelled through, these 24 lines added to the 26 lines in page the first: — total quantity, fifty lines: — more than half of the whole, with its three full pages, and its 96 lines. Here at length it is — that, in breach, as it should seem, of his original plan, as indicated by the letter-press, our learned draughtsman, — so completely had he run himself out of breath, — has, in compassion for self and readers, though it should seem not without reluctance, put down a full stop.

In page 3, line 14, having a *proviso* to put in, he of necessity begins a fresh sentence: but, as if to make us believe that no addition is thereby made to the number of the sentences, he has done by us (pardon the expression) rather unfairly: putting, instead of a period, no more than a comma, at the close of it. So again, when he comes to line 25 of this same third page, he plays us a similar trick: and, as if the better to disguise it, — at the commencement of this *last* proviso, he omits the distinctive type employed for the assistance of the eye at the commencement of the *first*.

Thus it is that, after so much as has been done by our learned reformist in the way of self-purification — purification of his style from the malady of lengthiness, the leprosy of lawyer-craft, still that which has been seen has as yet cleaved to it: to complete the purification, a little sprinkling, such as is here offered, of the cleansing water, remains wanting to it.

IV. *Emendandum the fourth. Indication of Topics, none.* Horrific, of course, to learned eyes, will be so flagrant an innovation, as the one, the absence of which is thus audaciously made a matter of charge. *Lay-gents*, however — and for them alone am I of counsel — *Lay-gents* will, I flatter myself, see a convenience in it. Besides the clearness and promptitude it gives to conception, it performs the function of a Macadamizing hammer, in breaking down the aggregate mass; so many topics, so many denominations; so many denominations, so many sentences.

So much as to lengthiness on the part of the discourse. Now as to the consequences of it on the part of the readers. For my own part, (ex-learned as I am, and therefore, if ever, no longer learned — in the law in general, and in conveyancing law in particular, never learned at all, till I got this smattering at the feet of my Gamaliel;) — for my own part, I confess my perplexity to have been extreme; as (I fear) will, by blunders, in I know not what number, be but too amply testified. Nor can I (for I am a little out of humour, and revenge is sweet;) nor can I (I say) altogether suppress my surprise, that in this perplexity I have had a sharer in my learned master himself: — witness, *inter alia*, the same *exception* thrice imbedded, twice repeated, at the expense of four lines out of the 96,† in this one principal paragraph.

Apropos of these same *exception clauses*, I may, perhaps, take the liberty of submitting to his consideration the course which anybody may take for evolving, and which I always take for avoiding, such involvements; but this, if anywhere, must be in another place. At any rate, examples in abundance may be seen in "Official Aptitude Maximized," &c. just issuing from the press.

At the present writing, I must not neglect my clients: least of all my fair one, the heroine of the piece, for whose interest, — how ill-soever our learned reformist may think of me for the preference, — I cannot help feeling rather more solicitude than for his: — she having so much more at stake; and, in this her approaching condition, having so many ladies fair to share with her in the exigencies belonging to it. No: I will not think so meanly of her understanding, as not to suppose that, — how happy soever in her *Mrs. Allen* state, — it might not, on some occasion or other, occur to her, in her anxiety for the dear little ones, to cast an eye over this her *magna charta*, and, in its pages, as in a horoscope, seek to read their fate. This being supposed, — it cannot, I think, but be more or less matter of accommodation to her, to find in those same pages a possibility of understanding it. This accommodation, in so far as time and space would allow, it has, in the way that has been seen — and will, in another way, be more particularly seen, — been my humble endeavour to supply her with.

To render perceptible to sense the degree of improvement introduced by him in respect of lengthiness, the ingenuity of my learned master has, with happy effect, exhibited, in parallel pages, his proposed instruments, framed upon his reduced scale, — placing them by the side of those which he found in use. By the long succession of vacancies, the attention of the reader is in every two pages drawn anew to the difference; vacancies, in the deed of sale, 20; in the mortgage deed, 10; in the marriage settlement, 23. In the mind of his adventurous pupil, ambition, not altogether unmixed with a dash of envy and jealousy, has inspired a similar course; the dwarf upon the giant's shoulders is an emblem which the temerity will be apt to present to

* In line 67 of the Draught in this Edition.

† Here 6 out of the 131.

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recollection in the minds of readers. How small the utmost ulterior reduction I have been able to effect, will be obvious to every eye.

By the particular type employed in the re-print here given of author's draught, indication is given of most of the words regarded as capable of being eliminated, without prejudice either to *intelligibility* or to *certainty*, supposing the form exhibited in the reviewer's draught substituted. In the reviewer's draught a further liberty is taken, by the insertion of a few additional topics, which, for the reasons given in the notes, afforded a prospect of being of use. By a correspondent sign these also are rendered, in like manner, more readily distinguishable.

I. Deed of Sale.

Author's Draught. *(No Topics given.)*

"*Proposed Form of a Conveyance to a Purchaser*"*

"**This deed made**[a] *the 25th day of March* 1926, **Between** *Andrew Allen, of* **of the one part,**[b] **and** *Benedict Butler*, **of of the other part, Witnesseth, that,** in consideration of £1,000 *sterling*,[c] **by the said Benedict Butler, now paid to the said Andrew Allen,** for the absolute purchase[d] **of the property hereinafter mentioned, The said** *Andrew Allen* Doth sell[e] **and convey unto the said Benedict Butler, All that**[f] **messuage with the out-buildings, garden, and other appurtenances**[g] **thereto belonging, And all those several parcels of arable meadow and pasture land therewith held, which premises contain in the whole five hundred acres, and are situate in the** parish **of** *Weston*, **in the** county **of** *Salop*, **and are now occupied by William Woodrow, And the same do together form** a Farm **usually called** *the Hope Farm*, **All which messuages and lands are** particularly described in the Schedule hereto[h] annexed **by the names, quantities, qualities situations and other circumstances necessary for the distinction thereof.**"

* The words regarded as superfluous are distinguished by the black letter; but in some instances simple elimination may not be sufficient: *substitution* may be necessary: as to these, see notes on *Reviewer's Draught*. The words employable in a blank form are in Roman characters; those which must be different on each individual occasion, in italics. So likewise in the deed of mortgage. To the marriage settlement, for reasons mentioned in note (1) thereto, these differences in the type do not extend, except as to the black letter in a few parts.

I. Deed of Sale. Allen *to* Butler, *anno* 1925.

Reviewer's Draught,* *(with Topics.)*

I. *Parties Described.*

No.

1. Seller's name.[a] *Andrew Allen.*
2. Seller's condition.[b] *Esquire.*
3. Seller's habitation.[c] County, *Shropshire*; Parish, *Weston*; Spot, *Allen Hall.*
4. Purchaser's name. *Benedict Butler.*
5. Purchaser's condition. *Butcher.*
6. Purchaser's habitation. County, *Shropshire*; Parish, *Weston*; Spot, *Fore Street.*

II. *Subject-Matter Described.*

7. Subject-matter of the sale—its species.[d] *A Farm.*
8. Subject-matter of the sale—its individual description. See Paper of Particulars hereto annexed, marked A, and signed by the parties.

III. *Equivalent given for the Subject-Matter.*

9. Purchase money.[e] *One thousand pounds.*

IV. *Time, Place, and Tokens of Agreement.*

10. Seller's name in his hand-writing,[f] in token of agreement. *Andrew Allen.*
11. Day on which seller's name was written. *April first* 1925.
12. Place[h] in which seller's name was written. *Allen Hall, near Weston, Shropshire.*
13. Purchaser's name in his hand-writing, in token of agreement.[i] *Benedict Butler.*
14. Day on which purchaser's name was written. *April first* 1925.
15. Place in which purchaser's name was written. *Weston, Shropshire.*

* What is in Roman type, being of general application, may be in print; that which, being in each instance different, cannot be included in the letter-press, is shown by the *italics*. So in the mortgage deed and deed of settlement. The numbers, the addition of which is proposed by the reviewer are in smaller type.

NOTES ON AUTHOR'S DRAUGHT.

[a] *This deed made.*] Pregnant — always with ambiguity, frequently with falsehood, sometimes with deception and unexpected loss — loss to the amount of the whole value of the property, is this word *made*. Made? To which of a number of persons in quality of *maker* or *makers*, does this participle make implied reference? The draughtsman by whom *preparation*, or the parties by whom *adoption* and *authentication* are given to it? I say *to which*: — for, seldom does it happen that the two so different operations, are the work of the same day: not unfrequently days, weeks, or months — not to say years — must, in the nature of the case, intervene between the performance of the draughtsman's part, and the performance or performances of the part or parts of the party or parties; in particular, on the purchaser's side. On each side of the transaction, what may happen is — that *parties* in any number may be separated from each other by any interval in the field *of space*; and, in consequence, the *acts* by any interval in the field of *time*. Moreover, in the case of any one or more of them, payment may be divided amongst *times* in any number; it may be made, as the phrase is, by *instalments*.

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Here, then, is a gordian knot, which, somewhere or other, and somehow or other, Judge and Co. must have cut by their instrument of all-work — *falsehood*. Of the statement here in question, the *truth* has, somewhere or other, been pronounced immaterial. But — in the nature of the case, far indeed is it from being so: it is of no small importance. While without prejudice to the currency of the instrument, a false *place* of signature or a false time, or both, may be inserted, — a forgerer is comparatively at his ease: — not so where place and time are, each of them, required to be individualized. In, for example, the *house* asserted in the instrument, — on the *day* asserted in the instrument, — was the party, in fact, actually present? In these questions may be seen an obvious subject-matter, for an inquiry, — the searchingness of which, a forgery will be in no common degree fortunate, if it abides.

[b] *Part.*] In the correspondent place in the mortgage deed, this word is omitted, supposed by error of the press.

[c] £1000 *sterling.*] Sums should be expressed rather in words than in figures. *Example:* draughts on bankers. *Reason:* in figures, danger of ambiguous delineation, and subsequent falsification: accordingly, in the author's deed, words are employed. *Sterling?* In these days, is there any use in this word? Yes; to distinguish English, not only from Scottish pounds, but from the pounds of several other nations: in Ireland and the distant dependencies, to distinguish real money, from fictitious — called *currency*.

[d] *Absolute purchase.*] Of this term, — to render it clear of ambiguity and obscurity, — in the eyes of parties, if *lay-gents*, not to speak of lawyers, — *fixation* and *explanation*, — authoritative, appropriate, and adequate — would be altogether needful. Nowhere at present is any such explanation to be found. No otherwise can it be brought into existence than by a code. Supposing it thus brought into existence, reference to the text of the code is among the references which would require to be made from, and inserted in, the draught. As for *judge-made*, alias *common law*, — it *fixes* nothing; it keeps everything *afloat:* it *explains* nothing; it keeps every thing involved in clouds: it is a tissue of self-contradictions: a sage of the law gives no clear view of anything: *nemo dat quod non habet;* at the head of them sits and rules a judge, who — (as everybody knows) — knows less than any of them how to do what he is employed to do — to decide, — and knows not how to do anything but the reverse of what he is employed to do — anything but how to raise and introduce, instead of dispelling and excluding, *doubts*.

[e] *Sell.*] By this one word *sell*, reference is made to two distinct topics: 1. *The quantity of interest* disposed of; 2. The absence or presence of an *equivalent:* only in so far as regards the quantity of interest, does this topic coincide with that to which reference is made by the words *purchase of the absolute property*, as per note [b]: — benefit of transmission, to successors determined by the choice of parties, included.

As to what concerns *equivalents*, — the transfer may be, as here, *with* and *for* an equivalent, or *without* one: if *with* and *for*, the equivalent may be either, as here, *of money* (call it in this case *pecuniary*) — or of money's worth, in any other shape (call it in this case, *quasi-pecuniary*): if *without* equivalent, — the transfer is *gratuitous;* the transaction may be termed a *gift;* the instrument a *deed of gift.*[*] *Grantor* is a term which — where the transfer is not gratuitous, but for money — our learned draughtsman, I observe, employs on several occasions. It has, however, the inconvenience of presenting to view the idea of *gratuitousness*. *Disposer*, a term having for its *conjugates* the verb *to dispose*, and the substantive *disposition* — a term in familiar use — would have the convenience of including the three transactions, *sale*, *mortgage*, *and marriage-settlement*. For a correlative to it, an obvious term is *disposee:* and this same termination *ee* is indeed used in the same sense in the word *mortgagee*, and in many other words. But, it has the disadvantage of presenting to view the *subject-matter disposed of;* in which case no *person* is, unless he has the misfortune of being a slave. Accordingly, if it depended on me to choose a word, — a word I would rather employ is *receptor: receiver* — the word already in use — having the disadvantage of presenting, exclusively, the idea of a person, whose interest in the subject-matter is only that of a *trustee*. In the case of an *immoveable* subject-matter of property, as here, — gratuitous transmission, as everybody sees, is not, by a great deal, so frequent as in the case of a *moveable;* obvious cause of the difference, the difference in respect of value. Nor yet (as everybody knows) is *gift* of an estate — absolutely without example. This, therefore, is a mode of *transfer*, or say *transmission*, for which also provision will require to be made. In the arrangements proper to be made in the code for the two cases, — one difference, there is, which is highly important, and not unobvious. In the case where an *equivalent* is received, — the eventual obligation designated by the word *warranty*, presents itself as being prescribed by established principles: not so, in the case where *no* equivalent is received. In both cases, this word *warranty* presents itself as an obligation, of which, — either in

[*] *Gift.*] — To obviate ambiguity, the use made of this word in the technical sense, should, in the Code, be abolished.

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the draught or in the code, with reference to it from the draught,—express mention should be made: and of which it should accordingly be said, either that it *is*, or that it is *not*, intended to have place.

[f] *All that.*] As to the insufficiency and consequent inutility and redundancy of the necessarily incomplete particularization, of which these words form the commencement, —see above, in the observations as to all those deeds considered together.

[g] *Appurtenances.*] Appurtenances? No, not I: if I were Mr. Benedict Butler, no such things would I have. Needless, useless, and, unless inoperative, mischievous,—would be this word. Look at the books: the only definition of it you will find warranted is—anything, and everything which, in virtue of some other word in the deed, would pass without being mentioned in it: but if so, then to what use mention it? Not to Miss Campbell, not to Mr. Butler, no, not even to Squire Allen—would information in any shape be presented by it: nothing better than appalment and perplexity. Not that imagination could present them with anything like the uncertainty and consequent mischief it is pregnant with. Look for it in the books, though it were no further than Jacob's dictionary, you will find that *outhouses* are appurtenances to *messuages*; *messuages* to *messuages*, not. *Orchards* and *gardens* are appurtenant to *messuages*; *lands*, not: whereby you will learn that orchards and gardens are not *lands*. See now one effect of it in these same *formulæ*. In this same deed of sale, mention is made of it; in the mortgage deed, in the family settlement, not. A tyro conveyancer—what might not his sagacity infer from this? that, in the case of a sale, *appurtenances*, whatever they were, would *not* pass without express mention made of them; in the two other cases, yes; a tolerably good sample this of the effects of *surplusage*. If, to any mind, this word presents any idea more definite than the above, it must be *that*, for giving expression to which, our author employs the Rome-bred law-word, *servitude*—mention of which may require to be made further on.

[h] *Annexe.*] This word is here inserted, as having (obviously by error of the press) been, or the equivalent of it, omitted *out of the letter press*.

INSTRUCTIONS FOR FILLING UP THE BLANKS IN REVIEWER'S DRAUGHT.

[a] *Seller's name.*] Write all names at length: christian names if more than one, as well as surname or surnames. In the case of a non-christian, (Jew, or Mahometan, for example) the equivalent, if any, to the christian name, will be included.

If more than one join in the sale, their names will be written, beginning with that surname which, in the order of the alphabet, stands first.

[b] *Seller's condition.*] In case of *dignity*, insert the title; of titles more than one, the highest: in the case of a *lord*, if a peer, the peer's name, with that of the peerage: in the case of a *bishop*, his name, with that of the bishoprick: in case of a *professional* man, his profession: in case of a *commercial* man, his business, as *manufacturer* (naming the subject-matter of manufacture,) *merchant*, *shop-keeper*, *tailor*, *shoe-maker*, *carpenter*, *smith*, &c.: in case of a man not following any *profit-seeking* occupation, say *esquire* or *gentleman*.

In the case of a female—if never married, say, in the old accustomed form, *spinster*: adding the dignity, if any, or the profit-seeking occupation, if any: *single woman* will not serve, as not including females under age, and as not distinguishing married females from widows. In case of a married woman—concurring, for example, with her husband in the sale,—mention her maiden name, then her husband's, as directed in note [a], and his condition as to occupation, as per note [b].

[c] *Seller's habitation.*] If there be no fixed habitation, write the word *none*. If there be a habitation, express it as in letters brought from the General Post-office. If the habitation be *not* in a town, insert the name of the county and that of the parish: if *in* a town, insert, between the name of the county and the name of the parish, the name of the town. If there be fixed habitations in places more than one, insert them all. Add in every case either *householder* or *inmate*.

[d] *Subject-matter . . . . it's species.*] For instance, where integral, and uncompounded, say *a piece of land*, *cultivated* or *not cultivated*, or *a dwelling-house*, or *another building*, as the case may be: when integral, and compounded, of a dwelling-house (with or without outhouse and garden respectively,) with cultivated land, say *house with land annexed*, or *farm*, as the case may be: if the subject-matter be a fractional right, as a right of *mine-working* under land which belongs to a different proprietor—or right of *fishing*, or right of *drawing water* from a mass, current or stagnate—or share in the tolls of a *road* or *canal*—mention it accordingly. If subject-matters more than one are included in this deed, mention them accordingly.

[e] *Purchase money.*] For certainty, write the sum at full length in words; adding it, for facility of conception, in figures. If in whole or in part, the equivalent transferred consists of specific subject-matters of property, moveable or unmoveable, one or more, —a *ship* (for instance,) a piece of *jewellery*, or another piece of land,—mention them.

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[a] *In his hand-writing.*] If able to write, the person writes it, as above directed; if not, he makes with his pen and ink the mark of a cross +; after, and close to it, some other person writes the name, adding the word *witness* with his own name, written as directed in note [a]. In the case of a person of the female sex, a line is to be drawn through the word *his*, and the word *her* written over it.

[c] *Day.*] The year, month, and day of the month: first in words; then in figures. Properest writer in each case, the seller or purchaser himself. For greater certainty, the *day* of the *week* may be added. If (as may happen by mistake) the day of the month and that of the week do not agree, the day of the week will be most likely to be rightly supposed; the days in a week being, in comparison of those in a month, so much fewer.

[b] *Place.*] Designate the place as directed in note [c].

NOTES TO REVIEWER'S DRAUGHT.

[1] *Agreement.*] This accordingly will, in general, in respect of the payment of the money, be also the day, and the place, the place of performance; and on this account, to avoid carrying the form of the draught to an inconvenient length, the circumstances which here follow are not inserted in the list of topics. But, in possibility, they are susceptible of diversification without limit; and in practice they are accordingly diversified. To prevent mis-statement, with the falsehood involved in it, — the attention is therefore, in the proposed additional Nos. drawn to them, that appropriate provision may be made in the code. In the present practice, falsehood is an instrument ever at hand for the solution of all difficulties: by the practitioner, employment is given to it; by the judge, the desired effect. Here follow the numbers.

No.
16. Day or days in which the purchase money was made over.
17. Place or places, at which the money was at the respective times made over.
18. Person or persons, by whose hands respectively the money was made over.
19. Day or days, on which the purchase money was received.
20. Place or places, at which the money was at the respective times received.
21. Person or persons, by whose hands respectively the money was received.
22. Form or forms, in which the money was made over.

An additional topic this last, under which, as a preservative against fraud, particularization may have its use. In case of paper money at a discount, as in the instance of *currency* in a distant dependency, — without this particularization, in conjunction with that of the *time of payment*, the real value of the alleged equivalent will not be discernible. As to the word *sterling*, if there be any need of it or use in it, it will be for the purpose of distinguishing metallic money from currency as above. As for pounds Scots, there being no such money either in metal or paper, no actual payment can be made in it.

Note that, on every occasion, on which the money is sent by a public conveyance, the times of receipt may be different from the times of payment. So, when sent by a private hand.

II. DEED OF MORTGAGE.[1]

AUTHOR'S DRAUGHT. *(No Top ics given.)*

"*Proposed Charge of a principal Sum with Interest.*

"This deed made *the* 1*st day of April* 1927, Between *Andrew Allen of* of the one, *and Benedict Butler, of* of the other part, witnesseth, that, in consideration of *five hundred pounds sterling* by the said B. Butler to the said A. Allen, now lent and paid, the said *A. Allen* doth charge all that Messuage or dwelling-house, with the outhouses and gardens thereto belonging; also the three following parcels of land thereto adjoining and therewith occupied, namely, Blackacre, being meadow, containing ten acres; Greenacre, being pasture, containing four acres five roods; and Whitacre, being arable,

II. DEED OF MORTGAGE.

ALLEN *to* BUTLER, *anno* 1927.

REVIEWER'S DRAUGHT *(with Topics.)*

N I. *Parties Described.*
1. Pledger's name. *Andrew Allen.*
2. Pledger's condition. *Esquire.*
3. Pledger's habitation. County, *Shropshire;* Parish, *Weston;* Spot, *Allen Hall.*
4. Lender's name. *Benedict Butler.*
5. Lender's condition. *Butcher.*
6. Lender's habitation. County, *Shropshire;* Parish, *Weston.*

II. *Subject-matter Described.*
7. Subject-matter of pledge — its species. *A Farm.*
8. Subject-matter of pledge — its individual description. See Paper of Particulars hereto annexed, marked A, and signed by the parties.

III. *Sum Lent.*
9. Sum of money lent. *Five hundred pounds.*
10. Species of money in which paid. *Promissory notes of the Bank of Scotland.*

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containing eight acres; All which said premises are situate in the parish of *Stoke*, in the county of *Hereford*, and are now in the occupation of Giles Hall, with the appurtenances thereto belonging, *with the* payment to the said B. Butler, of the sum of *five hundred pounds*, with interest at *four* per cent. per annum, as follows, viz. *half a year's interest* of the same sum to be paid on the 1st day *of October*, now *next* ensuing, and the said *principal* sum of five hundred pounds *and* another half year's interest,[9] for the same to be paid on the 1st day of *April*, which will be in the year 1928."

No. IV. *Rate of Interest.*

11. Rate of interest. *Four pounds per year.*

V. *Times for Payment.*

12. Day, for re-payment of principal, unless respited, *April first* 1929.
13. Days, for half-yearly payments of interest. *October first* 1928; April first, 1929: so on, till repayment of principal.

VI. *Time, Place, and Tokens of Agreement.*

14. Pledger's name in his hand-writing, in token of agreement, and receipt of the money. *Andrew Allen.*
15. Day, on which pledger's name was written. *April first* 1927.
16. Place, in which pledger's name was written. *Pledger's House, Allen Hall,* Weston, *aforesaid.*
17. Lender's name in his hand-writing, in token of agreement. *Benedict Butler.*
18. Day, on which lender's name was written. *April first* 1927.
19. Place, in which lender's name was written. *Pledger's House, Allen Hall,* Weston, *aforesaid.*

NOTES ON AUTHOR'S DRAUGHT.

[1] *Mortgage.*] *Mortgage* is the denomination, by which, for the present purpose, I designate this sort of deed: this being the most important and obvious *species* of the *genus* for the designation of which our learned author has employed the word *charge*. Preferable however to *mortgage* — preferable in every point of view, and to a most important effect — would be *land-pledge*. *Mortgage* is understood by nobody; *land-pledge* would be understood by everybody; by everybody, male and female, who has ever seen or heard what passes at a *pawnbroker's*. So much for name.

Behold now how much may depend upon a right name: behold the instruction that may be afforded by it. Give validity and currency to either of these forms — the author's or the reviewer's, — and there will be no more need of equity suits, nor any more need of delay, where *land* is the pledge, than where a pair of ear-rings, worth the same money, or a table-spoon, is the pledge: and the present licensed depredation — in some circumstances, on the part of the lender, in others on the part of the borrower, — is at an end. What is it that should make the difference? Is not a sheet of paper as easily passed from hand to hand as a pair of ear-rings? As to difference, if any there be, it is all of it in favour of the *immoveable* pledge; for, the jewels may be run off with; the land can not. Secresy — in regard to *rents* — is *that* an object? for example, on the borrower's account, lest the state of his finances should be made known. More effectually can that be provided for in the case of the land, than in the case of the diamonds: the receiver of the rents, whoever he is, being supposed an object of confidence on both sides, the transfer is made to *him*: made to him, in trust, in case of payment on the appointed day, to deliver the money, or the land to the one party; in case of non-payment, to the other. Here, too, as far as regards the *principal*, all danger vanishes: trustee can no more run away with the land, than borrower or lender could; and as to the *interest*, it is no more than what every man, who employs a steward, by so doing trusts him with.

Indulgence to debtors — is *that* an object? How much better could it not be afforded, how much likelier would it not be to be afforded—by a creditor who had *no* law-charges to apprehend, than by one who *has* law-charges to apprehend — especially such as those which hang over his head at present?

Behold now the *extent* of the benefit which this theory, simple as it is, may be made productive of, if carried into practice: benefit to landlords in general; benefit to tenants in general; benefit to everybody, but to those who are among everybody's worst enemies, and who will be sufficiently known by that name. Where recovery of rents is the object, in so far as there is property enough of the tenant's, or anybody else's upon the premises, — landlords — nor yet altogether without good reason — are by themselves trusted with the power of being themselves judges in their own cause. Well then — where recovery of possession is the object — pledges on the spot being wanting or insufficient — with how much less danger might they not be trusted with the power of being, to the effect in question, judges in the cause of others — meaning of course by others, those with whom they have no connexion? On this plan, in case of *appeal* — and in that case only — might those judicatories have cognizance, which at present have it *in the first instance*. Of the essentially and incurably corrupt, and, in every respect, unapt judicatory in question, my opinion is the same as that of the *Morning Chronicle*: but, so long as the people continue oppressed with it, I

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see much less danger from *this* power in its hand, than from most of that which is at present exercised by it.

As to the *species* of conveyances to which this system would be applicable, — the same principles which would give simplicity to *deeds* of sale, mortgage and settlement, would give correspondent simplicity to *leases*.

Turn now to the *gaming-table*. On a visit to it, — why, in that case, should not a noble lord, or honourable gentleman, put into his pocket a few papers of *sales*, *mortgages*, or *leases*, as well as the correspondent number of *rouleaus*? This is not a mere jest: for, if ruined, why might he not be so, — for the benefit of a set of companions of his own choice, with whom he was living on convivial terms, and in regard to whom, in conjunction with the chance of being ruined by them, he possessed an equal chance of enriching himself by their ruin, and from whom he might receive more or less of indulgence, why not as well for their benefit alone, as partly for their benefit, partly for the benefit of a set of lawyers whom he knows nothing of, — from whom nothing is to be got, — and from whom, on his part, nothing but ruin, or a more or less near approach towards it, can be expected?

Lawyers, by whom, comparatively speaking, such facility has been left to *transfer*, in the case of *moveables*, — whence happens it that they have dealt on so opposite a footing by it in the case of *immoveables*? *Answer*, altogether simple. Society could not have held together, and the matter of legal plunderage would either never have come into existence, or, as fast as it had come, would have been swallowed up, — had they thus loaded it in the case of moveables; but, in the case of immoveables, the magnitude of the masses is such as renders it possible for them to bear the load. Sweet, accordingly, is the "*savour of the realty*," to learned noses.

[2] *Another half year's interest.*] But what, if that happens which most commonly does happen? What, if the loan is continued, as it sometimes is, for years by dozens, beyond the twelvemonth? For this case no provision is here made. [See notes on the Reviewer's Draught.] In any case, on failure of payment, prompt is the remedy needed; and next to instantaneous is the remedy which, as above, the nature of the case affords; yes, and which would be afforded in fact, if those judicatories, which are *law* and *equity* courts in name, were not *iniquity* courts, if not in purpose, in effect.

III. Marriage Settlement Deed.

Author's Draught. *(No Topics given.)*

"*A Marriage Settlement of Real Estate,*
"*under the Proposed Code.*[1]

"This Deed made *the First day of April* "1926, Between *Alfred Allen of* "*the one part, and Clara Campbell of* "of the other part, Witnesseth that in consideration of a Marriage agreed upon and about "to be solemnized between the said *A. Allen*, "*and C. Campbell*, the said *A. Allen*, doth "convey, charge, and settle, in the event of such "marriage taking effect, and from and after "the same, all and singular the Messuages, "Cottages, Farms, and Lands, situate in the "parish of *Waring*, in the county of *Lincoln*, "comprised in the Schedule, to these presents, "and therein particularly set forth by the "names, quantities, qualities, situations, "occupiers, and other circumstances necessary for the distinction thereof respectively, and all other, if any, the Messuages "and Lands of or belonging to him the "said A. Allen in the parish of Waring "aforesaid, with the appurtenances thereto "respectively belonging, and also all the impropriate tithes or tenths of corn, grain, "and hay, and other great tithes or tenths "whatsoever, and all moduses and other "compositions for tithes or tenths yearly "arising and payable from or in respect of "all and singular the aforesaid lands and "premises; to the person and persons respectively, *With the several yearly and prin-*

III. Marriage Settlement Deed, Allen *with* Campbell, *anno* 1929.

Reviewer's Draft *(with Topics.)*

No. I. *Parties Described.*

1. Intended husband's name. *Andrew Allen.*
2. Intended husband's condition. *Esquire.*
3. Intended husband's habitation. County, *Shropshire*; Parish, *Weston*; Spot, *Allen Hall.*
4. Intended wife's name. *Clara Campbell.*
5. Intended wife's condition. *Spinster.*
6. Intended wife's habitation. County, *Shropshire*; Parish, *Weston*; Spot, *Cross Street.*

II. *Subject-matter Described.*

7. Subject-matter of Settlement — its species. *Farms* and *Tithes.*
8. Subject-matter of Settlement — its individual description. See Paper of Particulars hereto annexed, marked A, and signed by the parties.

III. *Provision for intended Wife's Interest during the Marriage.*

9. During the Marriage, pin-money.[1] *Two Hundred Pounds per year.*
10. This provision is a rent charge, charged[2] upon the estate.
11. This rent charge is unalienable.[3]

IV. *Provision for intended Husband during his Life.*

12. Subject to this charge, the estate remains to *Andrew Allen* during his life.
13. He is not impeachable for waste.[4]

V. *Provision for intended Wife in case of Widowhood.*

14. On the death of intended husband, intended wife is to receive during life a jointure of *Five Hundred Pounds per year.*
15. This jointure is unalienable.
16. It is to be paid clear of all charges.
17. In consideration of it, she hereby gives up whatever provision she might otherwise have under the Code.[5]

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cipal sums, and for the purposes following, viz. "the said premises to stand **and be** charged *with "the clear yearly sum of two hundred pounds "sterling to be paid to the said Clara Campbell, "for her exclusive and inalienable enjoyment "during the said intended intermarriage, and "subject thereto, the premises to go to the said A. "Allen, during his life, without impeachment of "waste, and after his death, the said premises to "stand charged with the clear yearly sum of five "hundred pounds sterling, to be paid to the said "Clara Campbell during her life in lieu of her "legal interest in any lands to which the said A. "Allen shall die entitled, and subject thereto, the "said premises to stand and be charged with "the sum of five thousand pounds as a provision "for such child and children of the said intended "marriage* (**except an eldest or only son, for "the time being, entitled either absolutely "or presumptively under the limitations "next ensuing**) *and to vest and become payable "at and in such time, or times and manner as "hereinafter mentioned; and subject as aforesaid "the said premises to go To such son of the said "A. Allen, by the said C. Campbell, as shall "first or alone attain the age of twenty-one years, "or dying under that age shall leave issue of his "body living or conceived at his death, and if "there shall be no such son, then to all and every "the daughter or daughters of the said A. Allen, "by the said C. Campbell, who shall attain the "age of twenty-one years, or dying under that "age shall leave issue of her or their body or re-"spective bodies, living at her or their death or "respective deaths, in equal shares if more than "one, and if there be but one such daughter, then "the whole of the premises to that daughter. And "if there shall be no child of the said intended "marriage, who shall become absolutely entitled "to the premises under the limitations aforesaid, "then the said premises to go and revert to the "said A. Allen. And as to the said sum of "five thousand pounds hereinbefore charged for "the benefit of such child or children of the said "intended marriage* (**not being an eldest or "only son for the time being entitled either "absolutely or presumptively as aforesaid**) "**as hereinafter mentioned**. *It is hereby de-"clared that the same sum shall vest in and be-"come payable to such child or children* (**except "as aforesaid**[a],) *or else in any one or more "exclusively of the other or others of them at such "age or time or respective ages or times, in such "manner and with such dispositions over, to, or "for the benefit of the other or others of the same "children or any of them, as the said A. Allen "shall at any time or times after the said in-"tended marriage direct or appoint,*

"And for want of such direction or appointment, "or so far as the same, if incomplete, may not "extend, the said charge, or the unappointed part "thereof, shall vest in and go to all and every the "children and child of the said intended mar-"riage (**other than an eldest or only son for "the time being entitled as aforesaid**) *who "shall attain the age of twenty-one years, or in "the instance of a daughter or daughters shall*

VI. *Provision as to Descendants who, subject to this jointure, are to become Heirs to the Estate: say* the Estate-takers.

No. Cases in which the Estate descends undivided.

18. Case 1. At the father's death, a son alive: no nephew or niece of his, by any elder brother of his, alive: sisters or younger brothers of his alive or not in any number. To this son the estate passes undivided.
19. Case 2. At the father's death, a daughter alive: no brother or sister of her's alive, nor any nephew or niece of her's, by any brother or sister of her's. To this daughter the estate passes undivided.
20. Case 3. A son alive, daughters or younger sons alive or not: nephews or nieces of the son by an elder brother of his, alive in any number. To the eldest of these nephews, — or, if there be but one, to the only nephew; or, if no nephew, to the niece, if but one, the estate passes undivided.

Cases in which the Estate descends divided.

21. Case 4. No son alive: nor son, or daughter, by any son. Daughters, in any number more than one, alive. To these daughters the estate passes in equal shares.
22. Case 5. No son alive: a daughter or daughters alive: by a deceased sister of theirs, one niece of theirs alive. To the daughter or these daughters, with their niece, the estate passes in equal shares.
23. Case 6. No son alive: a daughter or daughters alive: by a deceased sister of theirs, nieces two or more alive. Among the daughters and their nieces, the estate passes divided. But the shares of the daughters are, as above, equal as between each other: so are those of the nieces. But the nieces, in whatever number by one sister, take among them no other share than that which would have been their sister's had she been alive: so, if daughters more than one are all deceased, each leaving a daughter or daughters.
24. Case 7, &c. Upon the same plan, the estate will be divided through any number of generations: the share of each mother passing entire to her daughter, if but one; in equal shares among her daughters, if more than one: whatever be the number of her daughters, to her son, if but one; if sons, more than one, to the eldest.

VII. *Money Provision, for Children not taking part in the Estate: say* the Money-takers. *Apportioner, the father. In this provision, no child, having part in the Estate, has any part. Having the whole includes the having a part.*

25. Sum total at his disposal, *Five Thousand Pounds*, charged on the estate, as per No. 10.
26. Share of each, whatsoever he appoints: the whole, any part, or no part.*
27. By deed, he may bind himself to any such child or children, or to any person on behalf of any such child or children, to charge the estate with any sum not exceeding the total charge, as per No. 25.
28. So likewise by last will, in so far as is consistent with what he has done by deed.
29. No money, advanced, in his lifetime, to, or for the benefit of, any such child, whether in the way of income, or in the way of capital, — will, unless by deed expressly so declared to be, be understood to be designed to be deducted out of the apportionment made as per Nos. 26, 27, 28.
30. No charge, endeavoured to be made by him on the estate, will have effect till after this settlement charge, as per No. 25, has been carried into effect.
31. To the receipt of any share of the portion-money, he may annex all such conditions not prohibited by law, as he thinks fit.
32. *Maintenance.* For this purpose, upon the *principal* of any such child's portion he may pay, or direct to be paid, — to such child, or to any person on account of, such child, — *interest* at any rate mentioned by him, for any length of time up to full age or marriage; at which time the principal, or what remains of it, will be to be paid.

* How many hundred thousand pounds, spent in misery-making litigation, for the benefit of Judge and Co., would not a law to this effect, if enacted in time, have saved? Calculate from the cases alluded to by Mr. Humphreys.

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"*marry under it, to be equally divided between "such children if more than one, and if there shall "be but one such child, then the whole of the said "unappointed charge to vest in and go to such one "child, and the same charge to be paid to such "children or child respectively, at the same ages, "or times, or age or time, if the same shall happen "after the death of the said A. Allen. But if "the same shall happen in his lifetime, then im-"mediately after his death,* provided always *that "after the death of the said A. Allen, and in case "he shall have made no direction to the contrary, "it shall be lawful for the guardian or guardians "of any infant child or children of the said in-"tended marriage presumptively entitled to a por-"tion or portions under the said charge, to levy "and raise any part or parts not exceeding in the "whole for any such child, a moiety of such his, "her, or their then eventful portion or portions, "although the same shall not then have become "vested, and to apply the money so to be raised "for the preferment, advancement, or benefit of "such child or children in such manner as such "guardian or guardians shall in their or his dis-"cretion think fit, provided also that after the "death of the said A. Allen, and in case he shall "have made no direction to the contrary, it shall "be lawful for any such guardian or guardians "as aforesaid, to levy and raise*[2] *and apply for "the maintenance and education of such child or "children for the time being of the said intended "marriage, as shall be presumptively entitled to "a portion or portions under the said charge, in "the mean time and until such his, her, or their "eventual portion or portions shall become vested, "such yearly sum or sums of money not exceeding "what the interest of the same portion or portions "would amount to at the rate of four pounds per "cent. per annum were he, she, or they then ab-"solutely entitled thereto."*

33. For any payment, as per Nos. 26 or 28, he may assign any *time* he pleases.
34. Of the portion-money obtained under this settlement, — whatsoever part, if any, remains undisposed of by the father, is to be divided among the children, and the descendants, if any, of the children, in equal portions, after the several manners mentioned in Nos. 21, 22, 23, 24.

VIII. *Subject to father's direction, powers to Guardian, of children not having part in the estate.*

35. Out of the principal, he may employ, for the benefit of any such child in the way of *advancement*, any sum not exceeding the half of his or her portion.
36. So yearly for *maintenance (education* included) any sum not exceeding interest at four per cent. upon the principal.
37. On the death of any such child before full age or marriage, — his or her portion, whatsoever part of it remains not disposed of, as per Nos. 35, 36, is to be paid to the surviving child, if one; to the surviving children, in equal portions, if more than one. Hence, before arrival at full age or marriage, the portion of any child may, by his or her own death, have been extinguished altogether, or by the death of others, augmented. But, in the allotments made of *advancement*-money, as per No. 35, neither of these contingencies is to be taken into account. The sum employable at all times for the benefit of each child, in both ways, is the whole, or the remainder, of the sum belonging to him or her on the day of the father's decease.[6]
38. For the times of payment in the several cases, and the mode of giving execution and effect to the several provisions, see the Code.
39. If, at intended husband's decease there be no child, or descendant of any child, alive, — the estate, subject to widow's jointure, as per No. 14, is at his disposal, and failing such disposal, passes to his heirs.[7]
40. Intended husband's name, in his handwriting, in token of agreement. *Andrew Allen.*
41. Day, on which intended husband's name was written. *May first*, 1929.
42. Place, in which intended husband's name was written. *Weston, Shropshire.*
43. Intended wife's name, in her handwriting, in token of agreement. *Clara Campbell.*
44. Day, on which intended wife's name was written. *May first*, 1929.
45. Place, in which intended wife's name was written. *Weston, Shropshire.*[8]

NOTES ON AUTHOR'S DRAUGHT.

[1] *Proposed Code.*] Matter, which, for reasons above mentioned, namely, in the observations on the three draughts taken together, is regarded as superfluous,—is, for distinction's sake, here printed in black-letter. Owing, however, to the want of correspondency between the plan of the Author's and that of the Reviewer's draught, — a considerable quantity of matter, regarded as superfluous, is left undistinguished; as not being, without explanation, capable of being disentangled from needful matter. This, however, may, by any person to whom the restriction presents itself as being worth the trouble, be seen by a comparison between the two draughts.

[2] *Except as aforesaid.*] Three times the same exception — each, all three times, imbedded in the same sentence, and a different set of words employed each time for the expression of it. In the Reviewer's draught, this and every other instance of involvement is avoided. In his form of locution, an article, out of which an exception is taken, opens with the words, "*Exceptions excepted;*" and in the next article, next to the words "*Exceptions are as follow,*" or "*Exceptions are the following,*" come the exceptions one after another, each for distinction preceded by a numerical figure. See *Official Aptitude Maximized: Expense Minimized.* On this, as on every such occasion, never is Mrs. Allen (late Miss Campbell,) with her misfortune, in not having had the benefit of Mr. Peel's lawyer-making dinners, out of his sight.

[3] *Levy and raise.*] Doubts and solutions, the same in this case as in that of Mortgage; which see. If in *this* case both these correlative expressions are necessary, not less so were they in *that.*

NOTES ON REVIEWER'S DRAUGHT.

[1] *Pin-money.*] This word, and the succeeding word, *jointure*, are in the same case. Being the words in common use, and sure of being familiar to every person who is likely to be-

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same a party in a conveyance of the sort in question; — here, in a deed of which it so highly imports them to possess, on every occasion, an adequate conception, — here is a perfectly good reason why these terms *should* be employed; nor is there any why they should *not*. As to *pin-money*, — nobody, at the sight of this word, is in any danger of supposing, that the whole £200 a-year is to be laid out in *pins;* any more than, at the sight of the word *spinster*, anybody would suppose that the whole life of the lady had been occupied in *spinning*.

[2] *A rent charge.*] On this occasion, a question or two the reviewer cannot avoid putting, in behalf of the future Mrs. Allen.

1. This same rent charge — from what *day* is it to be computed? — from the day of her unhappy loss?—from the quarter-day next before it, or from the quarter-day next after it?

2. By whose *hands* is it to be paid? — on failure of payment, what is it that, to save herself from starving at the end of a few days, she is to do? At the end of a few years or so, Eldon and Co. are ready, in the way that everybody knows, to supply her necessities, provided always that she has — what by the supposition she has not — money enough to satisfy their cravings, as per note on the Mortgage-Deed. Here then comes another demand for prompt judicature: for prompt *judicature*, even though it were not to end in *justice*.

To *some* of these questions, answer is given in the Author's Code, p. 262; reference to which is made for the present purpose, in a note to the Settlement Deed, p. 399. Not, however, to all; nor, in and from the Deed, is reference made to the document, to wit, the Code, in which an answer to them may be found. In the Reviewer's Draught, a supply, for this deficiency in the Deed, is provided; to wit, by reference made to the Code.

[3] *Inalienable.*] What does it mean? what ought it to mean? Inalienable to all purposes whatsoever, or with the exception of certain purposes? If with exceptions, — (1) Inalienable for joint benefit by joint consent? (2) Inalienable for husband's benefit with wife's consent? (3) Inalienable for wife's own benefit, at wife's desire? (4) Inalienable for children's benefit, on joint desire, at (5) husband's desire, at (6) wife's desire, as above? (7) Inalienable at suit of creditors for payment of debts, contracted by husband or by wife? — Matters all these, presenting the same demand for discussion and decision somewhere, but against all which the Author's *draught* shuts the door, by the all-comprehensive word *inalienable*. In the Code, by article 22, under the security for freedom afforded by the wife's secret examination, he allows the alienation of the whole of the subsistence provided for her by general law during widowhood; also, of any property derived by her during marriage from the bounty of a third person. But, is not the danger to her from fraud or improvident alienation incomparably less, in the case of *pin-money*, than in the case of *jointure?* — in the case where superfluities alone are at stake, with her husband's property as a resource for necessaries, than in the case where necessaries are at stake, and that resource is at an end?

Supposing, for any purpose, alienation *with her free consent*, allowed, — in that case, for giving the allowance, the words *without her free consent* would suffice; but, for particulars, in that case, as in so many others, reference should be made from the Deed to the Code.

Rendering this pin-money — rendering the estate itself, alienable for any one or every one of these purposes—would this render the provision ineffectual altogether? Not it, indeed: any more than establishing a general course of succession by law, failing ditto by deed or will, renders the power of transfer by deed or will ineffectual.

Now, as to alienation for payment of *debts*. Render the property inalienable altogether, you leave, exposed to the risk of disappointment by loss, one set of persons: render it alienable to this or that purpose, you leave, in like manner, exposed to the risk of disappointment by loss, another set of persons. *Query:* In which case is the evil greatest?

Answer · Render it *inalienable* altogether, to the number of persons thus exposed, there is no limit: for, all persons who, in the capacity of workmen, for example, or petty traders, have dealings with the parties, are included in it; and among them there may be those, in whose instance, owing to difference in respect of income, the same nominal loss may be productive of a dozen, a score, a hundred, a thousand times the suffering produced in the instance of the parties to the marriage.

Render it *alienable* for the benefit of creditors, — the suffering is confined to the sometimes indeed blameless, and merely unfortunate, but most commonly imprudent, and thence culpable, parties; with the eventual addition of their children, whom, as well as themselves, they had it in such case in their power, by ordinary prudence, to have secured against such loss.

For other landed property of the same kind — for other landed property of a different kind — for property in any other shape — (government annuities, for example, or life-assurance company annuities,) — it may happen that, to the benefit of the parties, to an unlimited amount, an *exchange* might be made. Under a rational system of procedure, with a correspondent judiciary establishment, — all parties interested, whether on self-regarding account, or on account of sympathy

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towards the parties, being allowed to intervene, — exchanges of all sorts might, for these purposes, be made, by any sets of persons, with little or no expense. Even at present, they are not unfrequently made. Yes; but by what authority? — in what way? Instead of judicial authority, in the appropriate and apt way, by legislative authority, in an anomalous and unapt way: and at an *expense* which not one person out of several thousands is able to defray. And why thus made? Only that a set of placemen and lawyers may, on each occasion, share among them so many hundreds of pounds.

But, the beings who have as yet no existence — the children's children, one set after another, down to the world's end — these are the dear possible creatures, by whom, to the exclusion of so many existing and suffering ones, whatever sympathy has place in an aristocratical bosom, is engrossed: nor yet the whole number, but that half of it alone, whose merit and title will have consisted in the having received, from the hand of positive and ungrounded law, the *name* of their supposed male, in preference to that of their female, and thence more certain, progenitors; and it is for these same possible, that actually existing human beings, in unlimited number, are to be cheated, and to an unlimited amount made sufferers.

If, during the existence of a form of government by which the interest of all besides is sacrificed to the assumed conjunct interest of the one and the few, — it be on any account advisable to provide leading-strings to check aristocrats, in their individual capacity, in their propensity to run into ruin, the recent French institution of *majorats* would, perhaps, be the best adapted to the purpose: always understood, that in England it be confined to *peerages*.

In this case, for the preservation — not, indeed, of the spendthrifts themselves from ruining themselves, but of their relatives from suffering disappointments from them, — inalienability would be the sole and tolerably efficient remedy. But, for preservation of all persons besides from being cheated and made sufferers by them, — *registration* (of which presently) would be an indispensable, and the sole remedy, though unhappily, as will be seen, never more than an imperfect one.

[4] *Without impeachment of waste.*] An odious locution this — relic of antique barbarism, altogether unfit for any honest purpose. In respect of morality, what a lesson! Mischief under its own name expressly authorized by law! By this expression, when made use of, what is it that is really intended? That the estate should be wasted? No: only that, in a particular shape, a fair profit, adapted to the nature of that shape, should be reaped from it. The profit thus intended — what is it? — profit from the sale of timber growing on the estate? This, then, is what should be said; — more demand here for reference to an appropriate section in the appropriate code; a section having for its object, the confining within limits beneficial to all interests concerned, the profit derivable from this source. Is any other fractional right intended to be reserved out of the aggregate right of ownership? If so, in conjunction with the right of cutting and selling timber, it should be designated by some adequately-comprehensive locution, such, for instance, as *lifeholder's profit in the shape of capital;* with reference, for explanation, to the codes.

In the Equity books, to the head of *waste*, under the sub-head *permissive* waste for contradistinction from *positive*, is referred *omission to* keep in repair. Under its ordinary and specific name, in speaking of the correspondent obligation, mention should be made of it in the code, and referred to in the deed. Under both heads, matter proper for the code will be found in those same books.

[5] *Gives up.*] More demand for reference to the appropriate Code. The arrangement which Mr. Humphreys, and with incontestible reason, proposes is, — that, in the Code, — to *dower*, with its uncertainties, be substituted — a provision as clear as may be of uncertainties. This supposed done, — thereupon will come a clause, giving legality to whatever arrangement may, in relation to this provision, be made in a marriage-settlement; for it is not for the legislator, to whom all individuals are alike unknown — it is not for him, on any such occasion, to take upon himself to force upon them an arrangement which does not suit the purpose of the only individuals interested. So far as their interests are alone concerned, and laying out of the question whatever interest the public at large may have in the matter, — what belongs to him is neither more nor less than to provide against *fraud, accident*, and on their part *inadvertence:* and, for these purposes alone, to establish such all-comprehensive arrangement as presents a prospect of being well adapted in a greater number of instances than any other all-comprehensive arrangement that the case admits of. But, this supposed done, — here, in the tenor of the code, would come the necessity of a subsidiary arrangement, having for its object the securing to the *widow*, at all events, and at every point of time, one or other of the two alternative provisions: to wit, *that* under the general rule, and *that* under the particular rule agreed upon and laid down in the settlement. Employ the *summary* plan, as per the note to the Mortgage Deed, this security is established: deny it, you deny justice, and leave the afflicted female in the condition expressed by the proverb of the *two stools*.

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[6] *Father's decease.*] When arrived at this point, not inconsiderable (it cannot but be acknowledged) would of course be the perplexity of Miss Campbell, if she regarded herself as being under the obligation of obtaining any particular as well as clear conception of the contents. But to no such painful obligation will the lady regard herself as subjected: — so small will be the probability, — and at any rate so great the distance, — of such a state of things, to an imagination occupied by the idea of near-approaching happiness: and, should the desire ever come upon her, of seeing — in what way, in any proposed state of things, the division may come to be made — (a desire not likely to arise till she has marriageable children,) there, in one of her drawers, lie the means of satisfying it.

Miss Campbell throughout — Miss Campbell is the chief object of my care. And why? Even because — whatsoever is either not understood or misunderstood, is in proportion mischievous; mischievous, in the joint proportion of the importance of the matter, and the number of persons interested, from whose minds the true import is in either way excluded. For, from non-understoodness or misunderstoodness comes oppositeness to expectation; from oppositeness to expectation, disappointment; from disappointment, suffering, in proportion to the importance of the consequences.

[7] *Heirs.*] HEIRS (*coheiresses* included.) Inserted here of necessity, and in want of a better, is this word, which none but lawyers can understand; better a word such as *successors*, which those, whose property is at their disposal, may understand. That which, for this and all other occasions, is wanted, is — a term which shall apply to property at large, whichsoever be the *subject-matter* — to wit, *immoveable* or *moveable* — or (what in law-jargon comes nearest to that expression) say *real* or *personal;* to which will require to be added *incorporeal;* so, whichsoever be the mode of derivation from such its source: to wit, whether simple and immediate, as in the case of *genealogical* succession, or unimmediate, and with the intervention of individual will, as in the case of *transfer*, whether by *deed* or *last will;* a desideratum this, which may and should be provided for us, instead of our being sent for a meaning to the obscure history of a barbarous state of society, altogether different from the present. This desirable term is presented by the word *successors:* this, then, if found apt for the purpose, is the word that will naturally be employed, should ever a rule of action be provided, which it is intended that those whose actions are to be determined by it should have the possibility of understanding. On the present occasion, the distinction might, in that case, be expressed by some such words as *land-taking successors* and *money-taking successors*. *Heirs* should, in that case, be, in all its applications, eliminated out of the code, and abandoned to the society of antiquaries.

As to lawyers, — as, in respect of honour as well as profit, it is their interest, so of course is it their desire and endeavour, that the rule of action, more especially in matters of property, be understood by as few, and to that end be as unintelligible, as possible. As for what the rest of the community suffer from this state of things, this is what scarce one in a thousand ever thinks about. As it is with wolves, so is it with lawyers; what sympathy they have, if any, it is sympathy for their own kind, all of it; for their prey, none of it.

Thence comes, in the arrangements themselves, that complicatedness, by which so much complicatedness in the expression given to them is necessitated. Complicated is the description of those persons who, separately or collectively, are to be in the possession of the estate. Correspondently complicated accordingly is the description of those who are not to have any part in the estate. What simplicity of description there is in the case is confined to this, namely, that whoever has the whole of, or any part in, the estate, has not any part in the money; and that whoever has the whole of or any part in the money, has not, at that same time, the whole of, or any part in the estate, unless by the death of some anterior taker of it.

[8] *Weston, Shropshire.*] Between wordiness and sufficiency some difference, it is hoped, will now have been seen exemplified: — every superfluous word is an additional cloud. Of wordiness, in the degree in which it is exemplified by English law practice, so far from sufficiency, deficiency is the result. For, when on this or that occasion, such is the quantity of the heap of particulars inserted, that the draughtsman is not able to bear the whole list continually in mind, the consequence is, — that on this or that other occasion, though exactly parallel to it, and calling for exactly the same list, — some of them are omitted, or others added or substituted: whereupon, in argument, the difference, in legislative or professional expression, is, of course, made use of as a ground for difference in justicial decision. Of this sort of style, — expensiveness and uncertainty, with the profit from both, were the manifest *final causes*, and never were ends more abundantly accomplished.

Now as to *Registration*. Uses, as applied to instruments of conveyance and contract relating to property in immoveables, these —

1. Preservation of these documentary evidences from loss and destruction.
2. Preservation of them from falsification.
3. Exclusion of corresponding counterfeit documents.

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4. In so far as the document is proof, of incumbrance applying to the property of the possessor of the estate, in relation to which the document registered operates as evidence of title, — affording, to all persons disposed to give him credit for money or money's worth, the means of guarding themselves against loss by insolvency on his part.

5. Affording, by means of the aggregate of the evidence thus preserved and rendered susceptible of appropriate publication, — information of the *statistical* kind, capable of being turned to account by government for the benefit of the public in a variety of ways.

Of these five good effects, — the first gives security to the owner of the estate, against accident; the second and third, against fraud and depredation, at his expense, on the part of the rest of mankind; the fourth, to the rest of mankind against fraud on *his* part; the fifth contributes to form a basis for the exercise of the legislative and administrative functions.

Alive to the importance of this means of security,—Mr. Humphreys, taking it up upon its present footing, affords for the improvement of it a quantity of highly valuable matter, as to which I must content myself with referring the reader to his work. I promised him *a treat;* I now fulfil that promise; such if it be to him, such will the invention I have to present to view be to every reader, in proportion as in his eyes security, to a degree beyond everything that as yet has been experienced, or can have been so much as anticipated, is an object of regard. By it, if narrow and sinister interest in powerful breasts can but be induced to permit the employment of it — by it, will preservation and appropriate publication be given to documentary evidence, to whatever purpose needed: preservation, and what is of correspondent importance, equally unexampled cheapness. It is an invention of which I can speak my admiration the more freely, as not having in my own person any part in it.

For the description of it, and in a more particular manner, of its uses,—I have but to transcribe a passage of an about-to-be published proposed Constitutional Code, ch. viii. PRIME MINISTER, § 10, *Registration System.*

"Art. 1. For the more commodious, correct, prompt, uniform, and all-comprehensive performance, of the process and function of registration in all the several departments and sub-departments — as likewise on the part of the Prime Minister, for the correspondent receipt by him of all documents, the receipt, and, as occasion calls, the perusal of which may be necessary to the most apt exercise of the several functions belonging to his own office — he will, as soon as may be, cause to be established, and employed in practice, in the several offices of the several departments and their sub-departments, the sub-legislative included, the mode of writing styled the *manifold* mode.*

"Art. 2. Particular uses of the manifold mode of writing are as follows:—

By the multitude of exemplars, produced at an expense which, with the exception of that of the paper, is less than the expense of

* "MANIFOLD WRITING. — 1. *Mode of Execution.*

"In the *manifold way*, the mode of writing is as follows: —

"Instead of a pen, a style of the hardest and strongest metal, without ink, is employed. Under the style, as under a pen, are laid, one under another, in number the same as that of the exemplars required, sheets of appropriate thin *paper*, alternating with the correspondent number of thin sheets of *silk*, into each of which has been worked all over some of the black matter used in printing, and called *printer's ink*. In this way, by one and the same course taken, at one and the same time by the style, may exemplars be produced, in any number not exceeding twelve, with not much more expense of time and labour, than is commonly employed in the production of a single exemplar by pen and ink. Eight exemplars at once, all of them perfectly legible, have thus been habitually produced. In London this mode of writing has for about twenty years been regularly applied to the purpose of conveying simultaneous information to a number of newspapers. To other purposes it has also been employed under the eye of the author of this work.

"For the performance of the operation, the stronger the hand the better.

"To perform in perfection requires some practice in addition to that which has been applied to the art of writing with pen and ink.

"If there be a difference in the exemplars, that which is furthest from the style, not that which is the nearest, gives the most perfect and clearest impression.

"*Silk*, when a good deal worn, answers much better than when new.

"Supposing this mode of writing employed to any considerable extent, the silk would require to be smoothed by some appropriate means; for example, by being passed through rollers.

"The *thinner* the silk the better. That which has been mostly employed is that which, in English, is called *sarsenet*.

"As to the paper, that which is at present employed is called fine single crown tissue paper: price 12*s.* 6*d.* per bundle, containing two reams.

"In strength, by reason of its thinness, it cannot be expected to be altogether equal to what is most commonly in use in England; nor in whiteness, nor thence in respect of beauty and legibility are all the exemplars, by reason of the oil, which is an indispensable ingredient. They are nevertheless perfectly apt for these its intended purposes. No more than half of the number wanted need be, or ought to be taken on the oiled paper; to wit, every other one; the paper of the others will remain in primitive whiteness, except a slight extravasation of the oil of the ink round the edges of the letters. The effect might even be produced by a single oiled paper; to wit, the one to which the style is immediately applied. But in this case the labour necessary to produce the effect will be greater."

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two in the ordinary mode it affords means for furnishing, at that small expense, to parties on both sides, for themselves and assistants, all such documents as they can stand in need of.

"Art. 3. Every exemplar being, to an iota, exactly and necessarily the same as every other, the expense of revision by skilled labour is thereby saved, as well as *unintentional aberration* rendered impossible.

"Art. 4. An exemplar, kept in the Registrar's office, will serve as a standard, whereby a security will be afforded against all *intentional* falsification, on the part of the possessor of any other exemplar.

"Art. 5. By the reduction thus effected in the expense of all judicial writings emanating from the judicatory, — the protection afforded by judication in its best form, — to wit, that which has for its ground orally elicited and immediately minuted evidence, — will be brought within the reach of a vast proportion of the whole number of the people, to whom it could not otherwise be afforded.

"Art. 6. A collateral benefit — a degree of security hitherto unexampled against *destruction* of judicial documents, by *calamity* or *delinquency* — may thus be afforded, by the lodging of exemplars in divers offices in which they would be requisite for other purposes: exemplars of documents from the immediate judicatories being, at the appellate judicatory, requisite for the exercise of its judicial functions; and, in the office of justice-minister, for the exercise of his *inspective* and *melioration-suggestive* functions.

"Art 7. To save the expense of custody, and prevent the useful from being drowned in the mass of useless matter, — the legislature will make arrangements for the periodical destruction or elimination of such as shall appear useless: care being at all times taken, for the preservation of all such as can continue to be of use, either eventually for a judicial purpose, or for the exercise of the *statistic* and *melioration-suggestive* functions, as per ch. ix. § 11, MINISTERS COLLECTIVELY: ch. xi. MINISTERS SEVERALLY, § 2, *Legislative Minister:* and ch. xii. JUDICIARY COLLECTIVELY, § 19, *Judge's contested-interpretation-reporting function:* § 20, *Judge's eventually-emendative function:* § 21, *Judge's sistitive or execution-staying function:* § 22, *Judge's pre-interpretative function:* § 23, *Judge's non-contestational-evidence-elicitative function.*"

Here, then, of every such conveyance, — without any addition to the expense, the trifling expense of the paper excepted, — we have no fewer than *eight* copies, and upon occasion as far as *twelve*, no one differing in a single tittle from any other; and this identity effected, without a particle of that skilled labour, the purchase of which, on the present plan, can never fail to be so seriously expensive. On this plan, unless it were for concealment of particulars, no need would there be for any such inadequate representative of the original, as that which, under the name of a *memorial*, is employed in present practice.

To each one of the parties, how numerous soever, an exemplar would be given of course. To obviate the case, — at present so pregnant, not only with delay, vexation, and expense, but even with loss of estate, for want of a producible title, — as many exemplars might be had by one party, as there were distinguishable parcels, which he might anticipate an occasion for making disposition of. So, when it happens that one estate, disposed of, the whole of it, by one and the same instrument, is situated in the territories of registration offices more than one, — so many of these offices, as there are, so many exemplars may there be. And finally, if, whether for ulterior security against accidents, or for all-comprehensive government purposes, it were found desirable that, for the whole territory of the state there should be one *general office*, in which an aggregate of the documents received into the several *local offices* should be kept — here, is an additional accommodation, that might be afforded with a comparatively inconsiderable addition to the expense.

For, the documents being thus distributed, every syllable of each would thus be made secure — not only against deperition by accidents, but against all possibility of falsification. For, suppose, for example, one of the parties dishonest, and disposed to commit this crime, what possibility of a successful issue could he contemplate? In his own exemplar he makes the requisite alteration: but what can it avail him, when, in case of the slightest degree of suspicion, there lie, in the custody of a public functionary, as well as in that of each of the several parties, so many exemplars, to which, for any such purpose as falsification, all access on his part is perfectly hopeless.

For the application of the registration system to the case of dispositions made of property, the appropriate course might be this: adequately-registered estates, all of them, to the extent allowed by law, secured against eventual as well as against actual alienation: secured against it, *no* estates *not* so registered. A *charge* is an efficient cause of eventual alienation: considered in respect of the subject-matter it applies to, *a charge* may be termed *general*, or say *generally-applying*, or *all-comprehensively applying*, when it applies to the *whole* of the property belonging to the *charger*, as in the case of a *judgment* or a *recognisance; specially-applying*, when it is only to one particular parcel of his property, and

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that expressly mentioned in it, that it applies: as in the case of a *mortgage*, or a *marriage settlement*.

The misfortune is that, be the registration and publication system ever so perfect, no lender of a comparatively small sum, — no person supplying goods or labour to a comparatively small value, — can have in his mind at all times a sufficiently correct conception of the solvency of the landholder whom he serves: the consequence is — that every estate non-alienable for debt, is a ready source, — and, at the pleasure of the owner, an instrument, of fraud. But, so long as the fraud is protected and encouraged by law, the impossibility, of doing every thing, that ought to be done, affords not any reason why as much as can be done should not be done; but, on the contrary, it affords a reason why as much as can be done *should* be done. True it is, that against loss, in comparatively small masses, — or against loss out of *income*, — small, as above, will be the security thus afforded: but, against loss in large masses; against loss out of capital; against the too frequently happening total losses of capital; — it would, in a tolerable degree, be effectual. Under "Matchless Constitution," it is true, no regard for the bulk of the community can rationally be expected: but, for the class to which the rulers themselves belong, more or less regard may be expected on the part of each: and the greater the number to which, to whatever classes belonging, the benefit can be made to extend, the more fully will the wishes of a well-wisher to all alike, be accomplished.

My learned master, I observe, makes much and good use of French law; but he seems not to be aware of the pattern of good management afforded by that law in this part of the field.

Under Matchless Constitution, interest being throughout the whole at daggers drawn with duty, — in this case in particular, the same individual being concerned in conveyances and in suits, the right hand adds to its other occupations that of making business for the left. Thus, under English-bred law: not so under Rome-bred law: in particular, in France. There, the class of *notaries* is a class altogether distinct from that of other lawyers. In that country, the other professional classes cannot indeed but be more or less deeply tinged with the vices inherent in the profession: howsoever less deeply than *here*, where, in every part of it, the whole chaos — substantive law, procedure law, and judicial establishment — has with such matchless skill and success been adapted to the purpose of unpunishable depredation. But, in the notary class, on the contrary, to such a degree of intimacy is brought, in that instance, the connexion between interest and duty — in the notary class, may be seen an example of a degree of integrity, scarcely to be matched in any other profit-seeking occupation whatsoever; accordingly, in that, above all others, may be seen an object of universal confidence. Hands altogether pure from the waters of strife, the notary adds to the trust of the conveyancer that of the banker: but with this difference — that it is only during short intervals that the money remains in his hands; those intervals, to wit, in which such custody is requisite for the purpose of the negotiation; and that, during those same intervals, he *keeps* the money without *lending* it.

Out of this state of things sprung just now an individual occurrence, more forcibly probative than can commonly be afforded of the truth of a general allegation. In France, the notaries form a sort of body corporate. In Paris, an individual of this profession went off, t'other day, with the value of about two or three thousand pounds sterling destined for a purchase. Scarcely had any such act of delinquency been remembered: a commotion, like an electric shock, went through the whole body: on recovery, they made up a common purse, and replaced the loss. In England, Ireland, Scotland (for in Scotland this institution of Rome-bred law has not, to any considerable extent, if at all, been adopted) — in these countries, Diogenes, with his lantern, might trudge on till the last drop of his oil was spent, ere he found the object of his search: in France, where they exist by thousands, he would save his oil, and the labour of laying a trap for his joke.

Apropos of notaries. I will take the liberty of suggesting to my learned master, the adding to his French-law library the standard book on the subject, *Le Parfait Notaire, &c. par A. J. Massé*, 3 volumes 4to. *Paris*, 1825, *cinquième edition;* the precedents in it he would find of a very different complexion from those which have given him so much trouble: much superior in aptitude to those in the Scotch law-book, intituled, *The Office of a Notary-Public:* in my copy, 4th edition, 1792.

Notaries being on the carpet, a word I must put in, in favour of an humble class of late years brought into notice. *Poor man's notaries* they may be styled, or *poor notaries*, or *pure notaries: pure notaries*, in contradistinction to *attorney notaries*, as *pure surgeons*, as by some styled, in contradistinction to *apothecary surgeons*. But *pure* my notaries may be styled in an additional sense — in the moral sense: pure from the sinister interest which the attorney notary and the barrister notary have, in making, with the instruments in question, work for themselves in the field of litigation. They are for the most part (it is said) country *school-masters*. These, the attorney notaries, have, as is natural, been, for some time labouring to put out of their

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way. Petitions for this purpose have for years been coming in. Alleged grounds—of course, relative inaptitude of these intruders: alleged consequences — immediate inaptitude, in all imaginable forms, on the part of their instruments; ultimately, increase of litigation on the part of their employers. But, if these same alleged, were the real, ultimate consequence, — with no such petitions would honourable table be encumbered. So says *evidentia rei*. Now as to evidence *ab extrà*. That, of the alleged inaptitude, by due search the country over, a body of evidence, larger than could be wished, might be found — the present state of the law is, of itself, sufficient to render but too probable: evidence, of the satisfactoriness of which to an appropriate committee, under the guidance of learned gentlemen, no great doubt need be entertained. But, as in other cases, so in this, — from *positive* inaptitude no conclusion can be drawn, capable of affording a sufficient warrant for the desired practical result, unless it be also *comparative*. Unfortunately for the unlearned clients of the unlearned advocate, — on this ground likewise, learned gentlemen are prepared to ride triumphant. Of law-learnedness in this and the higher grade together, tests over and over again established, approved, and incontestably and exclusively probative, two: — the *financial*, and the *convivial*, or say *manducatory*. Financial: clerkship articles duty, £120; admission duty, £25; total, on capital, £145; add, on income, £8. Tests preferred by Mr. Chancellor of the Exchequer, presumably the *financial;* by Mr. Secretary Peel, declaredly the *convivial;* by their humble servant, the *examinational*.

Be this as it may, for clearing away every shadow of objection on the ground of want of intellectual aptitude, — nothing is wanting but the proposed appropriate code, with an appendix composed of the proposed authorized instruments, adapted to the purpose by the brevity and intelligibility above exemplified. This boon granted, better qualified for the business would be the least learned country schoolmaster, than, under the reign of the present Chaos, the most learned of learned gentlemen can be. In this comparatively halcyon state of things, — in matters of small concern, the instruments of sale and mortgage, together with ordinary leases, wills of personal property, and the most ordinary species of contract, such as apprenticeship articles, hirings, &c. would remain to the humble class of notaries; family settlements and wills of land, to the elevated class. Even thus the business of the unlearned class would naturally be mostly confined within the field marked out by the ready prepared and authorized blank forms: while, for anything *special*, recourse would be had, by those who could afford it, to the learned class. As to *examination*, — plans, applicable to this as well as higher purposes, will, before the meeting of parliament, be at every body's command: title of the work, "Official Aptitude Maximized; Expense Minimized."

Before registration is done with, one word as to the means of *enforcement*. Speaking of the instrument, — in case of non-observance of enactments, "*utterly void*," says page 312. Nor is this (it is feared) the only page. Observe now the effects. In every case, client sinned against; lawyer the sinner: client punished; lawyer unpunished. In the present case, note the situation in which the client is placed. Under the name of a *memorial*, an instrument, containing matter under no fewer than eight specified heads, is required to be drawn up "in the form or to the effect of" a certain article (Art. 101,) .... "but with any alterations or additions which the nature of the case may require: *otherwise*," that is to say if, by the draughtsman, in respect of any one of these particulars, anything is done which, by an equity judge, may be pronounced not to be to that same effect — "every such deed" (it is said) "shall be *utterly void*." Now, then, as to the effects. Frequently, in the shape of capital, is the whole property of the purchaser of an estate embarked in the purchase: not to speak of the cases where, the purchase money being more than his all, a part of it remains charged on the estate, after the estate has passed into his hands. Think what, with a trap of this sort set for him, the hapless non-lawyer has to do, to save himself from it. At his peril he must turn lawyer: do, what by the supposition he is unable to do: for, if able, no need would he have for the professional assistance. But, in this case, an *indemnity* is provided for him: return of his money. Indemnity? Oh yes. Source of it a few years of equity suit, against the perhaps ruined man, by whose indigence most commonly the sale was produced. Lawyer ruins client, loses not a sixpence, and perhaps gets for himself a new suit. For, everywhere so it is — as in procedure, so in conveyancing; making flaw in draught, makes more business for draughtsman. But reputation? Oh, as to this, small here is the risk: *known uncertainty* of the law offers its ready cover to all learned sins. Thus, while in the shape of *pain of nullity*, *punishment* is in appearance employed in the *prevention* of the mischief, *reward* is in reality employed in the *augmentation* of it. Punishment? Yes: and what punishment? Punishment, the evil of which rivalizes with those which are inflicted for the most mischievous crimes. Not unfrequently, sooner than subject himself to any such forfeiture, the defendant — simple debtor or criminal — has been known to embrace imprisonment for life.

Then as to *time*. Thirty days fixed inex-

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erably for all cases. But who shall reckon up all the accidents, by any of which, without a particle of blame to the purchaser, performance of what is required, within that time, may be prevented? Day reckoned from, "the date of the deed:"—a day hereby *supposed* to be, in all cases one and the same for all parties: but how often, the act in question is of necessity the work of different days, has been seen above.

One instance more, page 185. Transgression, misapplication of any one of the three obscurified terms—*trust*, *use*, and confidence: penalty, here too expressed by the words "*utterly void*," applied to the "assurances," whatever they may be. Sin here, in every case exclusively the lawyer's: client altogether incapable of ever committing it. Author's design, in this case as in all others, meritorious. But, mode of execution how unfortunate!

Conveyances and contracts, which it is the intention of the law should *not take* effect—yes, to these, it is true, the effect indicated by the words *void* and *nullity*, and their *conjugates* and *quasi-conjugates* cannot but be attached. But then these cases ought to be, as without difficulty they might be, made known to all c ients: known, by being particularized in the Code; and every lawyer, participating in the formation of such forbidden arrangements, might and should be, made *punitionally* and *compensationally* responsible.

As to our Reformist,—in extenuation, with but too much truth, may he plead on this occasion universal practice. But, the dereliction of it is one which he will see the necessity of adding to the list of his so highly-needed innovations. Great, indeed, is the progress he has made, in the shaking off the shackles of habit—result of interest-begotten and authority-begotten prejudice: one effort more, however, the present case demands at his hands.

But, what reasonable expectation can you have (it may be asked) of seeing the force of law given to a means of security so galling to the feelings of those on whom the giving that force to it depends? especially if there be any approach to truth in what is said of the proportionable number of those, the nakedness of whose property would, by such an instrument of exposure, be uncovered? *Answer*. In the very modesty alluded to, as a certain cause of defeat, I descry a source of success. In nothing but the fear of such exposure could any man find any motive for opposition. On the bringing in the bill, it might, without difficulty, be sufficiently made known, that the Noes will, all of them, be carefully noted down, and rendered universally notorious. In the instance of each opponent, that which would, in this way, be made universally known is—that, by a difference, the amount of which was matter of shame or uneasiness to him, his actual property wanted more or less of being equal to his supposed property; all that would remain concealed would be—the exact amount. But to any man—to what purpose can such concealment be desirable? Two distinguishable ones alone have any application to the case: obtaining money on a false pretence of solvency; or obtaining respect on a false appearance of opulence: cheating creditors alone; or cheating *them* and everybody else.

Now as to *machinery*. In his haste to arrive at the essentials of his plan, our reformist seems, on this occasion, to have taken up for his support, without sufficient examination, a broken reed of authority; and the consequence is—a choice such as will be seen. No objection, however, does this oversight make to the essentials: for, other machinery (it will also be seen) the case furnishes:—machinery also in use—machinery simple, well constructed, and adequate.

Sets of Commissioners (so say his "Preliminary Enactments,") at least two; all of them (it is presumed) ambulatory. Annual expense, what? Amount not less than £634,000 a-year;* duration, of course as long as said commissioners can contrive to render it. Then comes the *retired allowance system*, and to *years* substitutes *life*. For justice, for security for the whole landed property of the kingdom, no such sum could be spared.—Royal amateurs want it for *palaces*; Lord Liverpool, for *churches*.

So much for the complicated, the slow-working, the expensive, machinery. Behold now the simple, the quick-working, the unexpensive. Precedents six; latest dates of each as follows:—Poor Returns, first accessible batch, anno 1787; (a prior one of

* Counties in England (Wales included) 52; in each, sets of Commissioners two; one for enfranchisement of copyholds, the other for partition of lands, freehold and copyhold; all (it is presumed) circumambulatory; together, 104. Number in each set, at least three; total 312. Of each set, clerical suite and et cæteras included, annual expense, say in round numbers £6,000; (charge for expense of commission for inquiry into the state of instruction in Ireland, was £7,000; ditto for ditto into the revenue of Ireland, £5,675.) First commissioner, say £2,000; puisnes, £1,000 each, (Mr. Peel, if they knew how to eat and drink, would, upon proof from Lincoln's Inn or the Temple, give them twice as much.) If, at a few years' end, they had performed their business—all well, or all ill, or all well and ill at the same time, or some well and some ill,—he would, unless he has repented, add to their salaries, whatsoever they were, a third more. Nominees, of course, the persons most interested in maximizing abuses and indemnities; Lord Eldon, with or without the assistance of Lord Melville and Mr. Wallace, would take care of the abuses; Mr. Peel, unless he repents, of the indemnities.

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1777, not accessible;) second batch, 1804; third, and last batch, 1818. Population Returns, first batch, anno 1812; second, and last batch, 1822. Scotch Education Returns, 1826.

Mode of eliciting the information,—author's the *oral;* reviewer's the *epistolary*. For judiciary purposes, for general purposes, — incomparably the best mode, confessedly the oral; the epistolary being but a make-shift — to save delay, vexation, and expense, on the part of the examinees; for the particular purpose here in question, probable delay being much less; vexation of examinees much less; expense next to 0.

Number of elicitators;—upon author's plan, as above, 312; upon reviewer's plan, one. Mr. Rickman, whose appropriate aptitude shines with so steady a lustre in the Population Returns, is at his post. House of Commons' clerk finds labour; Honourable House, authority and auspices; Mr. Freeling, with his mails, conveyance.

Time, occupied before the information is completed — on author's plan, what has been seen: on reviewer's plan, as follows: — Poor Returns, in the case of batch the first, time not apparent; Poor Returns, batch the second, date of the latest matter, 12th April 1803; date of order for printing, 10th July 1804: interval, months 15. — Poor Returns, batch third and last, — date of latest matter, last day of 1815; date of order for printing, 3d March 1818; date of order for elicitation not ascertainable without a search, the result of which would not pay for time and labour. — Population Returns, batch the first, — day appointed for the commencement of the operation in the parishes, 22d May 1811; month in which the digest of them was delivered in, June 1812, as per signature, *John Rickman;* interval occupied in collecting and digesting, not more than 13 months. — Population Returns, batch the second, — year appointed for the commencement of the inquiry, 1811; day and month not apparent; month in which digest was delivered in, June 1822; presumable interval occupied in collecting and digesting,— as before, 13 months. — Lastly, Scotch Education Returns, — date of the House of Commons' resolution in which they originated, 30th March 1825; date of Under Secretary of State's letter to the Lord Advocate in consequence, the very next day, 31st March 1825; date of letter from Lord Advocate, sending the first part of the whole of the information, 14th February 1826. Number of pages in the printed copy, 985: interval thus employed in collecting, not more than ten and a half months; within which time was performed a *vibrating* system of correspondence, composed of divers vibrations — letters written backwards and forwards.

In the case in question,—would any greater length of time be necessary? any grounds for any apprehension to that effect, can they be assigned? None whatever. Places constituting the local objects of inquiry and sources of information, — in those cases the *parishes;* in these, the *manors*. Reluctance as to the communicating the information, — in any greater degree probable in this case than in those? No; nor yet so much. In those cases, indemnities being out of the question, nothing was to be got by furnishing the information, nothing to be lost by not furnishing. On the present occasion, more or less may in general be lost, by omitting to furnish the information; more or less perhaps to be got by furnishing it; for, to each individual from whom the information would be required, the consequence of omission would be, that his interest would be disposed of, and in case of loss on his part, no indemnity would he receive.

Il ne faut pas multiplier les êtres sans necessité, says a well-known French proverb: and, of all multiplicable beings,—among those in whose instance the practice of that rule of arithmetic is most mischievous, are locusts.

As to our author's machinery for registration and other purposes,—his *quarter-sessions chairman* and his *clerk of the peace* — still more egregiously unapt is it for this than for its present purposes. But, to his plan, this inaptitude forms no objection: only for elucidation (so he expressly declares,) only for elucidation, does he bring it on the carpet. No fault is it of Mr. Humphreys, if, in the whole establishment, there is not a single judicatory that is in any tolerable degree fit for any other purpose than those for which, under Matchless Constitution, all judicatories, with but here and there an exception, have been invented—putting power into the hands, and other people's money into the pockets, of the inventors. A machinery adapted to his purposes — a *judiciary establishment*, with a correspondent *procedure code*,—each of them the first that ever really had for its sole object the giving execution and effect, with the minimum of daily vexation and expense, to the enactments of the substantive branch of the law, — is in progress; and the judiciary establishment plan will be in the printer's hands within a few weeks after the present pages are out of them.

Before concluding, I will take the liberty of suggesting, for his consideration, as briefly as possible, a few supposed improvements, of which his plan presents itself to me as susceptible: to do whatsoever else may be in my power, towards lightening his labour, and promoting his generous designs, would be a sincere pleasure to me. If, for the most part, these same suggestions should be found to apply to every other part of the field of law, as well as to the part on which his beneficent

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labours have been more particularly employed, — they will not, on that account, be the less excusable.

Distinguishable shapes, which the matter of a proposed code may, throughout the whole texture of it, have occasion to assume, five: the *enactive*, the *expositive*, the *ratiocinative*, the *instructional*, the *exemplificative*. Of the exemplifications of them exhibited in this work of our learned author, presently: in English statute law, sole shape exemplified, — the *enactive*. As to this same enactive shape, with an exclusion put upon all the others — nothing, with a view to rulers' purposes, could or can be more convenient. Expression of will this, nothing more: talent necessary, none beyond what is manifested by every child as soon as it can speak. Not to any of the four other sorts of matter. Not to speak of Russian, Italian, and Spanish translations — of the expositive and the ratiocinative, the French work, in which samples of them are exhibited, has been before the public ever since 1802, and another there has just been occasion to bring to view. Grades of functionaries, to either or both of which the *instructional* portion of the matter may be virtually addressed—*subordinates*, with a view to execution and effect; future *legislators*, for the better explanation of the designs, with a view to fulfilment.

Case to which the *exemplificational* more particularly applies, that of an as yet only *proposed* code. Legal systems, from which the matter of it may be derived, two: the *home*, and the aggregate of the most approved *foreign* ones: the *home* system, for the purpose of exhibiting in detail the *disorders* for which the code is the proposed remedy, and examples of particular arrangements, in themselves of a *beneficial* nature, but in respect of which the system, taken in the aggregate, is chargeable, — on account of the narrowness of the application made of them, and, throughout the remainder of the field, the employment of flagrantly-unapt arrangements, to the exclusion of them: the *foreign*, for the purpose of furnishing, under this other head, in support of what is proposed, the instruction afforded by experience. Note, that this same *exemplificational* matter must not be confounded with the matter composed of those *examples*, which there may be found occasion to give as an inseparable part of the *enactive*, though they may be considered as belonging also to the *expositive*.

Next to the *expositive* matter. Purpose of it, exclusion of the several imperfections, which, on every part of the field, and on this in particular, *discourse* is liable to labour under. These are, on the part of hearers and readers, *nonconception* and *misconception*: on the part of the discourse itself, *unintelligibility*, *obscurity*, *indeterminateness*, *ambiguity*. Against some of them, howsoever well framed the instrument in other respects, appropriate *exposition* will be an indispensable preventive remedy. But, to none of them, without the aid of another remedy, of the purely negative cast, namely, avoidance of *lengthiness*, can it be a sufficient one. As to lengthiness, — it applies, not only to the entire discourse, but also, and with different and still worse effect, to its component parts called *sentences*: and it is in this latter case that it is in a more particular degree productive of these several imperfections.

Efficient causes of *lengthiness* in sentences, — *surplusage* and *involvedness*. Of imperfection in both these shapes in *conveyancing* instruments, examples have been seen above.

Causes of imperfection in *all* these shapes, more particularly in that of ambiguity — not only *mis-selection* and *lengthiness* as above, but *miscollocation* likewise; miscollocation, whether applied to words or to phrases. For the avoidance of it, a set of rules will ere long be (it is hoped) at my learned master's service. For the exemplification of imperfection in all manner of shapes in *laws*, matter in rich harvest may be found in the English statute book: the most conspicuous repository of every imperfection of which legislative language is susceptible. Towards remediation, a disposition has of late been expressed by those on whom it depends: but, before that is done which the proper end in view requires to be done — before the form in which they are presented is the same with that in use in ordinary discourse, with no other difference than what is necessary to the exclusion of the above-mentioned imperfections — not inconsiderable is the quantity of matter, which, in the form of directive rules, will require to be framed, borne in mind, and for that purpose consigned to black and white.

Collocation — is it a light matter? Is it without effect on practice? Read this one line, and judge: "*Parliament*," says the statute (4 Ed. III. c. 14,) "*shall be holden every year once, and more often if need be.*" Miscollocation *that*. Proper collocation *this*: "*Parliament shall be holden every year once — and, if need be, more often.*" Not that there can be any adequate assurance, that by this or any other form of words, the would-be despot, in whose face this bridle was afterwards held up, would have held himself bound. But, if he had been — think of the effect that might have been produced in the destiny of England; and, through England, of the habitable globe. For general application, take this rule. Imbed, as above, your *limitative* clause in that one of two *principal* clauses, to which alone it is designed to be applied: imbed it in that *one*, instead of putting it at the *end* of the *two*, in one of which it is *not* intended to be applied.

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Of exposition-requiring terms, — groupes, which it may be of use to distinguish, these:

I. Terms of *universal* jurisprudence. Examples: 1. Obligation. 2. Liability. 3. Right. 4. Power. 5. Responsibility. 6. Possession. Original source of exposition to the whole group, the idea of *a command*.

II. Terms peculiar to *English-bred* jurisprudence. Examples from the field of property-law: 1. Feoffment. 2. Lien. 3. Trusts. 4. Uses. 5. Springing Uses. 6. Executory Devises. 7. Tenures. 8. Mortmain. In regard to these, — in a code on the new plan, only in respect of the use made of them in such parts of the existing law as remains unabrogated, — will *exposition* be the proper course. From the enactive part of the new code, these, and all those words which nobody but a lawyer understands, should be carefully excluded: — those alone employed, which, with or without exposition therein given, will be understood, — not by lawyers alone, but by everybody else.

III. Terms belonging to the common stock of the language; but to which, by distortion, lawyers have given an import intelligible to none but themselves. Examples: 1. Applied to the subject-matter of property, — *real*, instead of the appropriate and Rome-bred denomination *immoveable*. 2. *Personal* instead of *moveable*. 3. Applied to a conveyance, *voluntary* instead of *gratuitous*. 4. *Servitude*, instead of *partial ownership rights*, with the correspondent *obligations*. Wanted, for this idea, a more expressive *single-worded* denomination. *Servitude*, a word unknown to English law: instead of a particular interest in a *thing* immoveable, the idea it presents to a non-lawyer is — the condition of a *person*: — a condition bordering upon slavery. Here I have to turn informer. Smuggled in, by this reformist of ours, has been this same word *servitude*: introduced, without notice, from continental into our insular language.

IV. Terms belonging to the common stock of the language, — but, by reason of their ambiguity, coupled with frequency of occurrence and importance, with reference to practice, — their import needing distinction and fixation: — terms universally intelligible, but by reason of their ambiguousness, not the less needing to be thus fitted for use. Examples: 1. Land. 2. Modifications of place. 3. Divisions of *time*. Sub-examples under this head: 1. *Day*, the portion of the *year*: day, in contradistinction to *night*. 2. *Month* lunar, month calendar. 3. *Year* ordinary, year bissextile.

V. Words there are, which, notwithstanding the all-comprehensiveness of their extent, and the need there will be of them in an all-comprehensive code, need not any express definition, their import being on each occasion rendered sufficiently determinate. To this head belong divers names of *genera generalissima*, besides the jurisprudential terms brought to view above. Examples of these terms: 1. Subject-matters of operation: 2. Operations. 3. Correspondent functions. 4. Operators. 5. Instruments. 6. Judicial and other mandates. 7. States of things. 8. Events. 9. Occurrences. A pretty copious collection of them may be seen brought together and applied, on the occasion of the employment given to them in the above-mentioned Constitutional Code, chap. ix. Ministers collectively. § 7, *Statistic Function*.

In the case of all those more especially influential terms, — an accompaniment, in no small degree beneficial, might be — a list of *synonyms*: synonyms to single words, *equivalents* to short phrases. Not very numerous, comparatively speaking, are perhaps the pairs of words, which, on every possible occasion, may be used interconvertibly, each with as much propriety as the other. But, on each occasion, where any difference has place, the context will suffice, for security, against the endeavour, on the part of litigants, to produce, on the ground of the attached synonym, a wrong interpretatiou of the word employed in the text. By a characteristic feature of the proposed system — the *ratiocinative* part, — an additional, and hitherto unexampled security will be afforded.

As to our learned Reformist's Code,—short as it is, candidates in it for the honour of receiving exposition, I have made out a list of, not fewer than 289, belonging to one or other of the above divisions. These, however, in no inconsiderable number, apply not to this alone, but to every other portion of the *Pannomion* — the All-comprehensive Code. Of the whole stock belonging to that aggregate, the number, of course, cannot be small; but the field they belong to is proportionably extensive. The time for each of them to receive its exposition, is the time when the subject it belongs to, is for the first time brought upon the carpet.

Problems for solution: 1. How to distinguish terms needing, from terms not needing, exposition? 2. How to distinguish terms needing to *receive* exposition from terms fit to be employed in *giving it*? Scarcely, even, for *statement*, can room be found here; for *solution*, none: purpose of the statement, showing that they have not been, and saying that they ought not to be neglected.

Now as to the *ratiocinative* matter. For arrangements and correspondent enactments, in that part of the field of law to which the work in question more especially applies — standard of aptitude say, the *disappointment preventive*, or *disappointment prevention principle*,— or, more specifically, the unexpected-loss-preventing principle: — a branch this, of the *greatest happiness principle*, with a

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special denomination adapted to the matter belonging to this part of the field. — Prevent disappointment? Why? *Answer*. From disappointment, as everybody knows and feels, springs a pain; magnitude, proportioned to the value set by the individual on the benefit that had been expected. In this pain will be found the only reason, why any subject-matter of ownership should be given to the owner rather than to an usurper: to an usurper, by what denomination soever distinguished: *intruder*, *diffusor*, *embezzler*, *thief*, *robber*, and so on: the only reason why, to interests termed *vested*, more regard should be paid, than to interests not so denominated: the only reason why, for loss, — on any occasion, or from any source, — *indemnity* should be provided. From the non-possession of the millions of watches existing in other pockets, —you, who read this, do you suffer anything? Not you: and why not? because, not expecting to possess any one of them, — no *pain of disappointment* do you suffer from the non-possession of it. But, if by any hand other than your own — a thief's, an unjust claimant's, or a judge's, it were taken from you— yes; in any one of these cases a sufferer you would be: — quantum of suffering, in a ratio, compounded of the marketable value of the watch with the indigency of your pecuniary circumstances, to the purpose of replacing it, and the relative sensibility of your frame.

Here, then, is an intelligible standard, and the only one. Behold now the effects produced by the hitherto universal want of it. Succedaneums, in number infinite; but not one of them expressive of anything, besides the ungrounded *sentiment*, or say *mental sensation*, entertained, on the occasion, by him who speaks: — a sentiment of approbation or disapprobation, expressed under the expectation of finding, or producing, the like on the part of hearers, but not suggestive of any *ground* whatever, for the sentiment so entertained.

Examples deduced from this work of our Author's are the following: — "1. Natural Justice, p. 118, 119. 2. Equity, 119. 3. Natural Equity, p. 129. 4. Justice, pp. 161, 221. 5. Natural feeling, p. 203. 6. Harsh law . . . . cries feelingly for correction. 7. Our present law violates the first principle of property, p. 220." First principle of property? What then is its name? None does our author himself give to it: none has any person else ever given to it. Not so much as that given in Rome-bred law, in the quasi-Hibernian style, to the species of contract denominated the *undenominated*. Yet, for it to have a name — and highly urgent is its need of one — somebody must stand godfather. Well, then, this is done. As to the thing itself, gratifying it is to me to see my learned master already recognising it, and applying it. Witness two passages, § 114: "One claimant ought not to *disappoint* another:" p. 148, "The lord's *gain* is far from commensurate to his tenant's *loss*." Compare this with what, by the courtesy of England, is called *reasoning*, in judge-made law!

The honest and excellent work in French law on this subject, *Le Parfait Notaire*, has been already mentioned. In cutting open the leaves of it, no fewer than fourteen of these gaseous standards caught my eye. A list I took of them has unfortunately been mislaid. In addition to those above-mentioned, "Policy, Right Reason, Natural Reason, Law of Nature," &c. &c. were of the number. In many instances, they were even brought together, and stated as conflicting. Now, then, of these non-entities, suppose eight on one side, six, and no more, on the other, — then indeed should we have a majority. But suppose fourteen of these *puissances* ranged, seven on one side, seven on the opposite side; if these are to be taken for reasons, the most clear-sighted and decisive judge may avow himself a Lord Eldon without shame.

Now as to our learned author. Expositive matter he has given us a specimen of in 10 out of 118 articles: namely, in Art. 5, Land; 28, Execution of a Deed; 29, Conveyance; 30, Settlement; 31, Charge; 32, Assignment; 33, Release; 35, Execution of a will; 74, Warranty; 88, Trustee.*

His mode of exposition is, — in the case of all but Land, Execution of a Deed, Execution of a Will, and Trustee, — definition *per genus et differentiam:* in the case of *Land*, not found referable to any general head: the expression not quite so correct as could have

* A few words apropos of this word *trustee*. In every trust there are three characters essentially and indispensably concerned — *trustor*, *trustee*, and *intended benefitee:* distinguishable characters on every occasion these three: though, on some occasions, two of them, as if by Mr. Matthews, are played by the same person: on some occasions, trustor being at the same time intended benefitee, or one of a number of intended benefitees; so, on other occasions, trustee. But, be this as it may, without an intended benefitee, a trust can no more have existence than without a trustor or a trustee. In the Code, Art. 4, p. 138, mention is indeed made of "*the beneficial owner*" as a person for whom a nominee is supposed to be "in trust." But, this same beneficial owner —no where is he mentioned, as being, like *trustee*, one of the company: and as often as, and in proportion as, a breach of trust has place, the intended benefitee fails of being beneficial owner. Add to this, that, under a trust, a benefit may be intended and received, where there is nothing that it would be easy to fix upon as being *owned*. Exposition, proposed in form of *paraphrasis* — (definition, in the ordinary sense of the word not being obtainable for want of a superior *genus*.) — *Breach of trust has place, when, and so far as, through the fault of a trustee, a benefit, intended for the intended benefitee, fails of being received.*

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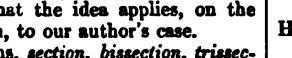
been wished: ground-works and underground-works not found comprised in it. In the case of the remaining three, *paraphrasis;* of which, elsewhere.

But, with this, or any other incomplete assemblage, we shall not be satisfied: nothing less than an all-comprehensive one does the purpose require. Composed of the two first of these five sorts of matter is his *Code*, distinguished from the rest of the work by being printed in italics; of the ratiocinative, instructional, and exemplificational indistinguishably blended, the rest of the work; *rest, residue, and remainder* in the language of learned gentlemen.

At the head of each article, a notice,—affording, by means of one or more of these five denominations, intimation of the nature and design of the articles,—is a document, that has presented itself as having its use, with the exception of the *exemplificational*, which had not as yet occurred to me; they accordingly exhibit themselves throughout the whole texture of the so often mentioned Constitutional Code.* Unfortunately, so to order matters, as that under no one of the four first of the above-mentioned five heads, shall any matter be inserted, that can be referable to any or others of them,—has not been found practicable. On the contrary, all the *changes*, of which the number of heads prefixt to the same article is susceptible, will perhaps be found rung upon them.

Nomenclature, for a series, or chain, of any length, of the results of successive *divisional operations*, performed upon the same integral subject-matter. Principle of denomination, the *numerical*. Subject-matters, to which, in the character of *integers*, it is applicable. 1. Our *globe*, or any portion of it. 2. The *three kingdoms* metaphorically so called—the mineral, vegetable, and animal. 3. *Weights and Measures*. 4. A mass of discourse committed to writing—*a literary work*. In this last instance it is that the idea applies, on the present occasion, to our author's case.

Denominations, *section, bissection, trissection, quadrisection*, and so on. Correspondent visible sign for the eye, the present mark employed for designating a *section*, a double long *ff*—; between its two lines the figure



indicative of the number of divisional operations, to the result of which it is employed to give expression. By the little swelling produced by this *pregnancy*, no peremptory objection will, it is hoped, be found produced: or, to avoid it, instead of being imbedded between the two *ff*, the numeral may have a single *f*, in a fine stroke drawn through it. By these little arrangements, simple as they are, order might, for the first time, be substituted to the as yet universally existing chaos: and, to an inconveniently inadequate, an adequate stock of denominations substituted. *Part, Book, Chapter, Section, Article, Title;* scarcely beyond this does the list extend; and, as to the order in which they are made to follow one another, the changes are in a manner rung upon it.

Now as to our author and this his work. Denominations employed in the order in which they here follow, these: 1. *Part*. 2. *Title*. 3. *Chapter*. 4. *Section*. 5. *No*. At this last stage, his stock of denominations is exhausted: the consequence is,—that for the results of the division made of the aggregate to which he has given the name of No. are employed the words firstly, secondly, thirdly, fourthly, fifthly, all in a state of anarchy, without any common head for keeping them in a state of society.

Of all these denominations, *section* (from *seco*, to cut) is the only one completely characteristic. Reason for employing it—its having, as above, an appropriate sign belonging to it. *Article* followed by *No.* there may be a convenience in employing,—for the *last*, whatsoever may be the number of the intervening divisional operations: these being the two denominations most commonly so employed.

Alike applicable to whatever languages are in use in any nation—this mode of designation might form part and parcel of an *universal language*. In the above-mentioned proposed Constitutional Code, I regret to think it will not be found applied: it had not occurred time enough.

Two other little tasks, at parting, for our Hercules.

I. For the instruction of *testators* and their draughtsmen,—a paper, exhibiting a picture of the most commonly-exemplified diversifications, which the state of a person's *family connexions* admits of, with a view to the provisions desirable, and likely to be desired to be made for them, *in a last Will*. For such provisions as require to be made by a *Deed*, this picture is already afforded by the Family Settlement Deed. But in this case the provision goes not beyond a *future contingent* family. Remain, for the objects of the here-proposed provision, all such families as are already in existence.

II. Provision, against the mischief, liable to be done by the *retroactive effects* of the proposed new system:—mischief, of the nature of that, by which the name of an *ex-post-*

* An extract from it is already in print, composed of four sections, belonging to Chap. IX., intituled *Ministers Collectively*. With the addition of other tracts belonging to the same subject, it forms an 8vo volume, under the title of *Official Aptitude Maximized, Expense Minimized*. The volume will appear in the course of a few weeks.

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facto law in English-bred law language (of kin to which is that of *privilegium*, in Ciceronian and Rome-bred law-language) has with so much justice been rendered a name of reproach. Here, if I mistake not, he will feel the convenience of taking the *disappointment-preventing principle* for his guide;—and, doing so, will find in it an adequate defence against all objections. What the occasion seems to call for is — a detailed exposition of the arrangements proposed for the exclusion of mischief from this source. Self-regarding prudence presents itself as joining with benevolence in calling for a careful attention to this subject. On this part of the ground, I see the enemy lying in wait for him. His defences, I fear, are not, as yet, in quite so good a condition as the occasion requires.

One passage exhibits a spectacle I was not prepared for: where our author, taking a sudden spring, mounting Pegasus, and from *civil*, making an excursion — an uncalled-for excursion — into *constitutional* law. It is in page 206. Libellous the result: "*feelings*," not the less acute by being democratic, "*hurt*" by it. Revenge is sweet: retaliation cheaper than prosecution.

Author. — "The many are a rope of sand."

Reviewer. — Say, are they so in Yankee-land?

Answers, like Irish Echo, envious Muse.

Was it, to propitiate those on whom every thing depends for success, that this *tirade* was inserted? If yes, when Sterne's Accusing Angel goes up with the passage, the Recording Angel shall have my consent for dropping his obliterating tear on it.

To preserve myself from the consciousness, as well as the imputation, of injustice, — one last word more. Bringing to view supposed imperfections and deficiencies has all along been the chief occupation of this Review: — imperfections, for correction; deficiencies, for supply. Of the mass of useful information, for which we are indebted to our philanthropic reformist, — of the ability, as well as honest zeal, displayed in the exposure of the peccant matter of which the existing system is almost exclusively composed, — of the ingenuity, manifested in so large a proportion of the remedies suggested, — no mention has been made but in the most general terms. But, to have conveyed any thing like an adequate idea of the merits of the work, would have required what, in classical editor's language, is called *a perpetual comment* on it, including a reprint of the greatest part of it.

As to myself, never, but for my learned master, should I have obtained any tolerable insight into this chaos. No probable further prolongation of my life would have sufficed for enabling me to look into it without the *lantern* with which he has furnished me — "*lucerna pedibus meis:*" — to look into it — I mean for the only purpose — the remedial — for which I could have brought myself to look into it.

— Hoping that such rare talent, coupled with such still more rare virtue, may not be lost to the world, or wait long, ere it be employed by those in whom alone is the power of giving effect to it, — I conclude.

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OUTLINE

OF A

PLAN OF A GENERAL REGISTER OF REAL PROPERTY:

CONTAINED IN

A Communication to the Commissioners appointed under Letters Patent, of date the 6th June 1828, to inquire into the Law of England respecting Real Property, and first printed in the Appendix to their Third Report, ordered by the House of Commons to be printed, 24th May 1832.

GENTLEMEN, — 1. By your circular, dated the 6th and 8th of August 1829, and addressed to various persons, of whom I then was, and now continue to be, one, you were pleased to call for suggestions on the subject of registration, as applied to men's titles to the subject-matters of the sort of property termed in English law *real property*. The present paper is written and presented to you in obedience to that call.

2. By your letter of the 18th of August 1829, addressed to myself alone, in answer to mine to you of the 15th of that same month, you were pleased to honour me with an assurance in these words: "They" (meaning you the said commissioners) "have no hesitation in saying, that they should think it their duty to include whatever may proceed from him" (meaning myself) "in any appendix to the report which they may hereafter make to his Majesty." On this assurance the present communication places its reliance.

3. The observations here submitted have for their immediate, appropriate, and by you expressly authorized subject-matter, the plan proposed for the institution in question by yourselves. But, by this as by any other proposal which is transmitted to any person for examination, reference, if not expressed at any rate implied, is made, or authorized to be made, to some determinate set of notions considered as constituting a standard of propriety, — in a word, to some *principle* or set of principles. I shall therefore, in so far as my own conception of my competence extends, take the preliminary liberty of submitting to you the *leading features* of the sort of plan which, to myself, presents itself as most eligible, prefaced by a short exposition of the principles from which they emanated, and to which they look for their support.

4. Superior utility and novelty. In these I behold two qualities, the union of which is indispensably necessary to constitute a sufficient warrant for any such communication as that in question. Yes, novelty: for in the idea of *absence* of *novelty* is included *absence* of *usefulness*, *presence* of *uselessness*. So far is novelty, when taken by itself, and not alleged to have inaptitude for its accompaniment — so far, I say, is it from constituting any reasonable ground of objection to a plan for this or any other purpose.

5. If this be true, what shall we say — what shall we think — of those by whom, without controverting the utility of a proposed plan, be it what it may, the alleged *novelty* is held up to view in the character of a ground for the rejection of it — of those, in a word, by whom the word *innovation* is employed as a token of disapprobation and an instrument of censure?

6. As to my own competence, I consider it, and accordingly speak of it, as having certain defined and precise *limits*, and on the outside of those limits lies all information as to all such matters of fact the knowledge of which is not capable of being possessed by an individual not actually engaged in the practice of the profession, which has for the subject-matter of its exercise the subject-matter of the commission in virtue of which you have been pleased to make this call upon me; whatsoever, therefore, I shall venture to propose, you will understand as calling upon you for amendment, as far as requisite; amendment, in every one of its three shapes — subtraction, addition, and substitution.

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7. On this occasion, the part which I take in the business will be seen to confine itself to the giving a comparatively small number of suggestions, by the adoption of which, if, and in so far as, my view of the matter is correct, it would be put into a new, and that the most appropriate conceivable form.

8. In and by various parts of my publications, I stand pledged to the public never to propose or advocate — never to oppose and combat — any law or institution actually established, or proposed to be established, without attaching to it an accompaniment, composed of *reasons;* meaning by *reasons*, considerations having for their object the showing in what manner, immediately, or through the medium of a chain of any length, of causes and effects, the arrangement proposed presents itself as likely to give a net increase to the *happiness* of the person or persons in question; that is to say, to the balance on the side of *pleasure*, after deduction made of the quantity of pain experienced during the period in question. As on all other occasions, so on this, by this engagement I regard myself as bound.

9. In one of those same publications, in particular, the subject-matter of consideration comprehends the entire aggregate of all the several sorts of *functionaries* of which the official establishment of any country is, or in the nature of things can be, composed; those here in question are consequently comprised; and throughout that work may be seen a specimen of the above-mentioned accompaniment, namely, in the instance of every article which has for a heading the word *ratiocinative*. The work I am alluding to is that which has for its title "Constitutional Code; for the use of all Nations and all Governments professing Liberal Opinions."

10. So much as to my plan. Now, gentlemen, as to yours, considered in like manner with reference to *reasons*. Your plan is before the public; with all due deference, what I have to propose is a somewhat different one. Your reports on the subject lie before me. I look in them for *reasons:* I find in them no such thing. A bill, moved for in pursuance of those same reports, has been before the public. I look in it for *reasons:* neither in that same proposed law do I find any such thing. As in the one instrument, so in the other, *stat pro ratione voluntas*. As for me, — my will not having any chance for the being clothed and armed with legal power, — the power of reason, if I can find any on my side, is my sole resource: *stat pro voluntate ratio*.

11. Is it even *unprecedented*, this same accompaniment? Look to *Westminster Hall*. In Westminster Hall, when in a judicatory, a judge, and in particular a Chief-Justice, bears his part in the making of the sort of decision called a *judgment*, and, for a *ground* of that same judgment, delivers his *opinion;* in this case, if the importance of the matter presents itself to him as calling for any further support, he fails not to deliver his *reasons*.

12. Again. When, from the judgment of one judicatory, a party makes his appeal to another judicatory; in this case, also, a man submits to the superior authority in question his *reasons*.

13. Now then, gentlemen, — in your quality of learned gentlemen, let me ask you — if in the business of *judicature* a support of this kind is needful, how much stronger is not the need of it that has place in the business of *legislation?* — that business, to the importance of which, the extent of the consequences considered, the importance of the business of judicature is but as number *one* to infinity.

14. Not altogether insensible to this demand has the Legislature of this country been even in its hitherto corrupted state. At the commencement of a statute, something in the guise of *reason* has been customarily and regularly served out. Served out! Yes; but of what sort? Of a sort such as a *Bridoison* in the drama of Figaro, or the Old Woman in the history of Little Red-Riding-hood, or a legislator in the land of Gotham, might have been proud of.

15. "*Whereas it is expedient*" — With these four words commences the train of surplusage, of which, under Matchless Constitution, the greatest part of an act of Parliament is so regularly composed: of these words is composed the whole of that portion of matter in which the draughtsman places his trust, in the character of a *justification* for the exercise made by him of that authority of which he is the organ, when laying about him and scattering broad-cast the seeds of good and evil, with so little expense in the shape of *thought*.

16. Now then as to the particular bill above alluded to. In that same bill, on looking into it for *reasons*, though I cannot find any such thing, yet what I do find is the just-named something which seems intended to serve instead of reasons. It is composed of those same four words — "*Whereas it is expedient:*" it is that same *Vox et præterea nihil*. I speak thus freely; because, if in that same *dictum* there be anything of *futuity*, or if you please, of *silliness* (and in my view of the matter, that there is, in abundance,) you, gentlemen, are not, any of you, chargeable with it. How little soever in accordance with *reason*, this phrase, it cannot be denied, is most perfectly in accordance with *precedent:* without it, this or that high functionary, whose name, official and personal, sooner or later shall and will be made publicly known, — inasmuch as his remuneration has been made to rise, in proportion as the rule of action has, by its immensity, and obscurity, and richness in surplusage, been made to increase in inaptitude

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for its professed purpose,—this self-authorized and self-paid comptroller of the authority of the King in Parliament, this secret imposer of taxes for his own benefit, might find the *bill* incomplete, and as such find *himself* obliged to throw it overboard.

17. Houses, honourable and right honourable, have each of them its *standing orders*. They have in common this one *standing reason*. It is as good for one thing as another: for one proposed enactment as for another. In this its aptitude, however, there is nothing of peculiarity: nothing but what might be shared with it by any other four words, drawn, in the way of lottery, out of a dictionary.

18. Such is the sort of embellishment belonging to a *bill* — meaning a future contingent *statute*. Of a piece with it — in exact keeping with it — are, in a *speech*, the two locutions — "*contrary to every principle of justice*," and "*contrary to the first principles of justice*," bearing upon the face of them the marks of the above-mentioned country of *Gotham*, as the country from which these commodities were, all of them, imported.

19. But, of this last-mentioned embellishment, the ground to which it is suited, and on which it is commonly embroidered, being, not a *bill*, but a *speech*, I find not any exemplification in the authoritative article of piece-goods I have been speaking of. Only, therefore, for *elucidation*, — or, if you please, for *illustration*, — not for *justification*, is the mention made which I have ventured thus to make of it.

20. Happily, a new order of things is at length born. *Nonsense* will not, for ever, sit on the throne of *common sense*.

21. *Reasons, principles, ends, means, rules, maxims, axioms, positions, propositions*. On the present occasion, had I to do that which, on some future occasion I may not impossibly have to do, — namely, in my address to you, to take for the subject-matter of it the *whole* of the field of *real property*, — in that case, in the character of *principles*, I might have to submit to your consideration no fewer than seven-and-twenty words, or sets of words, which, in the form of a *tree*, composed of a trunk with branches and sub-branches, called by logicians in former days the *arbor porphyrum*, lie at this moment before my view; and with them would come the whole *cortége* (as the French say) of the *genera generalissima* above-mentioned: for, wheresoever I tread, my wish and endeavour is to find, and if I do not *find* to *make*, my foundation sure. Happily for us all, on the present occasion, not more than two of these principles will it be necessary for me to trouble you with; with the addition of a small quantity of matter, under the head of *reasons* and that of *ends and means*: and a few preparatory propositions, which present themselves to my view, as being relevant, conclusive, and incontestable.

22. These principles are — 1. *The greatest happiness principle*, or say, *the happiness-maximizing principle*; and, 2. *The disappointment-minimizing*, or say *disappointment-preventing*, or say *non-disappointment-principle*. Yes, verily, the *disappointment-minimizing* principle. Nay, good gentlemen, do not be horrified by it; for here, not only on *sure* ground do I tread, but, as you will see, on *authoritative* ground; on ground, which you will find yourselves *estopped* from denying to be authoritative.

23. As to my *reasons*, what I cannot but apprehend is, that by the mention thus and here made of them, may be called to the minds of some of you the image of the old steward in Addison's drama of the Haunted House, who, after speaking of *reasons* and of *many reasons*, goes on to say, "at present I shall mention only seven:" but for this I must take my chance.

24. Now for my authority. Truly gratifying it is to me on this occasion, to find in accordance with this notion of mine about *disappointment*, the opinion, as proved by the practice, of a distinguished member of your own body. It preserves, in the completest manner, from the reproach cast by the word *theoretical*, this same *disappointment-minimizing* principle.

25. In the so admirably instructive and useful work of Mr. Tyrrell, intituled "Suggestions sent to the Commissioners appointed to inquire into the Laws of Real Property," I have the satisfaction of seeing this same principle three several times referred to as the ground of the arrangements which he recommends.

I. In page 121 — "The expense, uncertainty, and *disappointment*, which usually attend suits for long-forgotten claims, render them," says he, "a source of more injury than benefit to the church."

26. II. In page 239 — "Tithes, under a descent," says he, "can never be considered secure, until the right of the devisee has been barred; and a few cases of hardship to *disappointed* devisees are not," continues he, "of so much importance as the advantage — the safe alienation of property." Thus far Mr. Tyrrell.

27. And if such is the *inferiority* of the importance of these few cases of hardship to *disappointed* devisees, whence comes this same inferiority? — whence comes it (I ask) but from this, namely, that, in the cases in which by the result the alienation has been shown to be unsafe, *disappointment* has been produced by that same result, and that *these* cases having been *more numerous* than those others, the sum of the *pain* that has thereby been produced in these *last*-mentioned cases,

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is greater than that which has been produced in the *first*-mentioned cases?

28. III. Lastly, in page 312—speaking of of the wording of a certain devise (the particulars of which are not material to this purpose,) he gives as the reason of the *construction* (or, as a non-lawyer might say, the *interpretation*,) he recommends, this—namely, that "if no gift had been made to the owner of the property, the person to whom it was devised must" (he says) "have been *disappointed*;" meaning evidently that, on the supposition, that, if in the sort of case in question, the disposition made of the property in question by the judge, is that which he (Mr. Tyrrell) recommends,—on that supposition in the breast of the party in whose disfavour that same disposition operated either no such pain at all would be produced, or if any (pecuniary circumstances being supposed to be on both sides equal,) the *pain* would not be so great as in the contrary case.

29. I come now to speak of *ends* and *means*: ends, the attainment of which ought to be kept in view and aimed at, on the occasion of whatever arrangements come to be taken for the establishment of the proposed institution, and are accordingly aimed at, in the suggestions which here follow. These ends are distinguishable into two—namely, the *primary* and the *secondary*.

30. First, as to the *primary* end. The evil, against which a remedy is hereby endeavoured to be applied, consists in the unexpected loss of money or money's worth: the *primary* end aimed at is—the prevention of this loss.

31. Then, as to the *secondary* end. On the occasion, and for the purpose, of the application of this remedy, a certain series of *operations*, or (as among lawyers the phrase is) a certain *course of procedure* is necessary: on which occasion, evil to a greater or less amount in the several shapes of *delay*, *expense*, and *vexation*, cannot but have place. In the remedy we behold a *benefit*; in this last-mentioned evil we behold a *burthen*, attached to that same benefit; and what remains, after subtraction of the amount of the burthen, will be the *amount*, or say *clear value*, of the benefit; and the institution having for its *primary* end the conferring on the individuals interested that same *benefit*; the minimization of this same *burthen* is that which it has for its *secondary* end.

32. Just so is it in the case where, instead of a *register-office*, the scene lies in a *court of justice*; the benefit sought is a remedy against wrong; and this is what that institution has for its *primary* end; the attached *burthen* consists here also of *evil* in these same several shapes of *delay*, *expense*, and *vexation*: and the minimization of the evil, in these its several shapes, has been considered and spoken of as that which the institution of a court of justice, with its course of procedure, has for its *secondary* end.

33. On examination made into the *manner* in which these two ends—the primary and the secondary—may most effectually be attained, namely, by the maximization of *aptitude* on the part of the *matériel* as well as the *personnel* (to borrow a phrase from the war department)—that is to say, the *building* or *buildings*, and its or their *official inhabitants*,—together with the minimization of the *expense*—my eyes have fixed upon *seven* distinguishable *objects* in the character of *means*, each of them, for the attainment of one or both of these two ends; and, within the field of each of these seven *objects*, *means* of a more particular nature, which, with reference to them, may be styled *means of effectuation*; and which I shall accordingly designate by such their proper name.

34. *Objects* and *means of effectuation* taken together, thinking that to this or that one of you, gentlemen, it may perhaps be matter of convenience to have them upon occasion visible, all of them, at one and the same glance, I have given expression to the *tout ensemble* of them on the same side of a leaf of paper, in and by a *table*, which will almost immediately present itself to your view.

35. Of the *evil*, the prevention of which constitutes the *primary* end, five different modifications may be distinguished, each liable to fall on a correspondent description or class of persons: the diversity in the description of these same modifications of the evil will be seen to have for its cause a correspondent diversity in the relative situations of the classes of persons who stand opposed to it.

36. In all five cases, the loss, with the suffering consequent upon it, has for its efficient cause the *badness* of the *title* to the subject-matter of property in question. In some one of these same cases, the suffering has for its *immediate* cause the actual loss of an immovable subject-matter of property or some interest therein; in others, loss in the shape of *money*; in others, again, that which the suffering has for its immediate cause, is that which may with more propriety be considered as *non-acquisition of profit* or say *benefit*, than positive *loss* or say *burthen*.

37. Here, then, in the *aggregate*, are so many cases of *suffering*, which, when regarded separately, may be thus described:

I. Case the *first*.—Sufferer, a person who is in possession or in fixt expectancy of a subject-matter of real property, or of an interest therein, the *title* to which, for want of some *piece of evidence*, some *saving knowledge*, which a registration office would have taken charge of and rendered accessible to all persons interested, turns out to be *bad*.

38. II. Case the *second*.—Sufferer, a person who, having paid money for the purchase

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of a subject-matter of real property, or of an interest therein, fails of receiving it; he who, in return for the money, has undertaken to cause him to receive it, finding himself rendered, by the badness of his title to it, unable so to do; say, in six words, *a purchaser on a bad title.*

39. III. Case the *third.* — Sufferer, a person who, having paid money on the security of a subject-matter of real property, or interest therein, in such sort that if the money, with the interest due upon it, fails of being put into his hands on or before a certain point of time, the thing itself, or money to be raised by the sale of it, as above, will be put into those same hands, is by that same cause prevented from so receiving it; say, in six words, *a lender on a bad title.*

40. IV. Case the *fourth.*—Sufferer, *a would-be seller* with a bad title; prevented from becoming *actual* seller of it by the *badness* of his *title* to it.

41. V. Case the *fifth.*—Sufferer, a *would-be purchaser*, if prevented from becoming *actual* purchaser by the badness of the *would-be* seller's title.

In these *two last* cases, as well as in the *three first*, suffering has place; and that suffering has *disappointment* for its cause. But, in these same cases, the nature and the immediate cause of the evil are too diversified, miscellaneous, and uncertain, to admit of any more particular description here.

42. Now for the above-mentioned string of preparatory propositions.

I. The institution for the existence and organization of which you are occupied in making preparation, consists of a *building*, or set of buildings, to be employed in the character of a register-office, or set of register-offices, together with an *official establishment* for the carrying on the business by the performance of which the benefit contemplated is designed to be conferred on the several persons interested.

43. II. This benefit consists in the preserving from *deperition*, and keeping in a state of *accessibility* to all persons lawfully interested, a certain class of written *instruments*, or say *documents*, which have been framed for the purpose of affording, upon occasion, sufficient *evidence* of men's right and title to property of a certain description, distinguished by the name of *real* property.

44. III. Of this benefit, the principal, if not the only intrinsically valuable, but at any rate abundantly sufficient, use, consists in the preserving the several proprietors and other persons respectively interested, from the pain of *disappointment;* namely, that *pain*, or say that *uneasiness*, which a man experiences when, without his consent, any thing valuable which he has been in the *habit* of looking to as *his own*, ceases so to be looked upon by him; which said uneasiness has not place in the mind of any person who has not been in that same habit or state of mind in relation to that same thing. "Blessed is he that expecteth not, for he shall not be disappointed," says an addition proposed to be made to the *beatitudes*, if I misrecollect not, by *Dean Swift.*

45. IV. Of these two parts of the institution, neither can be brought into or kept in existence and applied to *use*, without a quantity, more or less considerable of expense in the shape of *money.*

46. V. This money is not obtainable but by means of *taxes.*

47. VI. In so far as taxes are imposed, money is taken from persons without their consent; and thereby, in their minds, a quantity, more or less considerable, of *pain* produced.

48. VII. As to *aptitude.* The more complete the relative aptitude of the several persons so employed, relation had to their respective official operations, the better. So likewise of the dead stock.

49. VIII. To come back to the expense, that *that* and aptitude may be considered in conjunction. The less the expense employed in the purchase of their respective services, so long as that aptitude is not thereby diminished, as well as in the provision made of the *dead stock*, the better.

50. IX. For giving, in the most concise and easily-remembered form, in the compass of *seven* words, expression to both these so intimately-connected positions, existence has been given to this one rule — *Let official aptitude be maximized, expense minimized.*

Now comes the promised TABLE of Objects, and means of effectuation.

I. Object the First—EXPENSE MINIMIZED: — Proposed *means of effectuation*, these —

1. Building, for reception of the stock, *one* and no more than one.

2. Assistant registrars, or say registrar deputes, superfluous none.

3. Of assistant registrars, or say registrars depute, the salaries minimized by competition. And see Object III.

4. Of registrar deputes during the probationary year, the service gratuitous.

5. For an object of reference, *map* of the whole territory: and see Object V.

6. For exemplars of the documents, the *manifold* mode of writing employed: and see Object VI.

II. Object the Second—DELAY MINIMIZED —delay of the service rendered to the suitors: — *Means of effectuation*, these —

1. Attendance uninterrupted—adequate to all demands.

2. Profit to functionaries from delay, none in any shape.

III. Object the Third — APTITUDE of the

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several FUNCTIONARIES MAXIMIZED: — *Means of effectuation*, these —

1. Sinister interest excluded, by the complete substitution of *salary* to *fees*: branch of appropriate aptitude thereby secured, the *moral*.

2. Probationership, antecedently to definitive location: branches of aptitude thereby secured, the *intellectual* and *active*.

3. Securities for appropriate aptitude, in *all* its branches, numerous; and effectual (as will be seen) beyond all example.

IV. Object the Fourth—APTITUDE of the MACHINERY MAXIMIZED: — *Means of effectuation*, these —

1. The arrangements regarded by anticipation as being best adapted having been appointed by parliament, head registrar (he being divested of all sinister interest) empowered to make eventually effective amendments, by the light of experience, subject to disallowance by King or *either* House.

V. Object the Fifth — Security for the efficiency of this same process of registration maximized: — *Means of effectuation*, these—

1. Object of reference, in the description given of the parcels, an all-comprehensive *map* of the *whole* territory, as per Object I.; exclusive of maps of *districts*.

VI. Object the Sixth — Extent of the application made of this same remedy maximized: — *Means of effectuation*, these —

1. Subject-matters of property (moveable excepted) *all* admitted; copyholds, leaseholds and incorporeal; thence, in correspondent number, the proprietors.

2. Fees exacted or permitted, none; thence the relatively unopulent not excluded from the benefit of the remedy.

3. The *manifold* mode of writing employed, as per Object I.; thence, expense in remuneration of skilled labour saved to suitors, and the *number* of exemplars furnished rendered correspondent to the *demand*.

VII. Object the Seventh — Minimization of the burthen with which the benefit is clogged: — *Means of effectuation*, these —

1. Fees (as above) none. See Objects I. and VI.

2. Means of *communication* for documents and other writings, the *letter-post*; thence, expense of *separate* communication through *skilled labour*, saved.

In relation to these several *means of effectuation*, now follow the promised explanatory and justificative matters in detail.

Now then for these several OBJECTS and *means of effectuation* in detail.

I. FIRST OBJECT to be accomplished — the *Expense minimized*: — *Means of effectuation*, these —

1. Means the first: — Building, for the lodgment of the whole stock — *matériel* and *personnel* (as the phrase is in French) together, — one and no more than one.

Already, if I do not misunderstand the matter, your leaning, gentlemen, is strongly in favour of this maximum of simplicity. Lest, however, after all, the determination should not otherwise be on that side, I will take the liberty of submitting to your consideration, an experiment which, in days of yore it fell into my way to make.

In the year 1796 or thereabouts (the year is not material,) Pitt the second formed a plan, and brought in a bill accordingly, for making provision for the whole pauper population of England, by means of a workhouse, under particular management, in every parish or small union of parishes. I took this plan in hand, and demonstrated that it would not do; for that, besides other objections, the difference in respect of the quantity of capital necessary between that plan and one that I pointed out, would not be less than fifteen millions. With all his faults, — such was the candour and magnanimity of that god of so many idolatries, — he gave up his own plan, took to mine, and a day was appointed for settling the details of it, when it was crushed by a *veto* from on high, the details of which belong not to the present purpose. The demonstration in question may be seen in four successive articles of Arthur Young's Annals of Agriculture. Put together, the sheets, some copies of which he presented to me, constituted a moderate-sized 8vo volume, which I propose ere long to reprint, under the title of *Pauper Management*, prefaced by a history of the above-alluded-to catastrophe.

It will form part and parcel of the history of the war carried on for not less than three-and-twenty years, between George the Third, of blessed memory, and one of his rebellious subjects. I mention thus much, gentlemen, lest, when you read of the capital of fifteen millions left out of his calculation by the heaven-born minister, you should suspect that while speaking of it I was in a dream.

I present to view this incident the rather because in the calculation of the expenses, projectors, however talented, are but too apt to overlook this or that *item*, which, when brought to light, appears to such a degree obvious, that the omission of it becomes a source of no small surprise.

Thus again: when the late Mr. James Humphreys came out with his plan for an inquiry into the subject of real property, the expense of that part of it which had for its object the obtaining no more than one portion of the information requisite, would have amounted to between four and five hundred thousand pounds. In a paper of mine in the *Westminster Review*, is shown how the like information *might* be, because it *had been*, obtained for next to no expense. So again, when Mr. Windsor, projector of the *gas light* system, came out with his proposal, an expense, the mention of which was not to be

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round in them, was that of the *pipes* by which this so useful species of air is conducted to its several destinations.

2. Means of minimization of expense the second — minimization of the number of the paid functionaries employed.

Minimization of the number of the functionaries employed? methinks I hear the draughtsman and the supporters of the existing *bill* exclaiming—Minimization of this *part* of the expense? Is that then the utmost that *your* plan does, or so much as professes to do? *Ours* exonerates the public of it altogether: it lays the *burthen* on the shoulders of *individuals;* and *these*, the only ones on whom it ought to press; that is to say, those by whom the accompanying *benefit* is enjoyed.

Answer 1. Applied to the institution in question, this measure of economy has for its ground the assumption, that the institution is of no use; for, in no inconsiderable proportion, those persons in whose instance the demand for the benefit has place, are those who have not wherewithal to pay for it; and if, for the good of the whole community taken in the aggregate, it be desirable, that for the sake of this species of saving, the benefit should be denied to this part of the whole population, so likewise is it desirable that that same denial should have place in the case of all the rest.

2. Then, as to those in whose instance no such complete inability has place, the less a man's ability to bear the burthen is, the more severely is the pressure of it felt by him. Be the price that will be thus set upon the benefit what it may, some there will be by whom it will no more be felt, than by the man by whom a halfpenny is given to a beggar is the loss of the halfpenny; while others there will be on whom it will press with all degrees of pressure, up to that which would be produced by his being deprived of the whole of what he has to live upon.

3. In a word, this assumes the shape given to the remuneration of the functionary to be that of payment by *fees;* and from that mode of payment results an increase given to the expense in another way, which will be brought to view hereinafter under another head; namely, by giving increase to the number of the *occasions* on which the money will have to be paid. Assessed upon the public fund, the burthen presses upon each man's shoulders in exact proportion to his ability to bear it; that is to say, in so far as the system of taxation is what it ought to be.

In another work of mine,* for the accomplishment of the desideratum here in question, — that is to say, the minimization of the number of paid functionaries and thereby of the aggregate expense of that pay — may be seen means applicable to functionaries in general, and accordingly to those here in question, — namely, power and obligation to the principal functionary to locate unpaid deputies in sufficient numbers. What may there be seen is — how the matter may be so managed as that there shall always be *functionary power enough*, and never *more* than enough: such being made, at all times, the interest of the principal, by whom these auxiliaries are located. As to this matter see below.

3. *Third* instrument of minimization applicable to the expense of the institution, competition applied to the remuneration of the functionaries.

If the security for appropriate aptitude on the part of the competitors were in any degree deficient, from this same deficiency an objection might be opposed to the use of this instrument of frugality; but the security which will here be proposed will be seen to be entire, and completely satisfactory; and this being the case, the objection vanishes.

As to any other objection to the application of the competition-applying principle, on those who object to the application of it in this case—on those, if any such persons there be, who approve of it in any other instance — is it incumbent to declare why it is that they disapprove of the application of it in the present instance. He who disapproves of monopoly in any one other instance, let him say on what ground it is that he approves of monopoly in this instance. To be consistent, he must approve of monopoly on the part of dealers, applied to everything in relation to which he here accords it to purchasers: the food he keeps himself from death with, the clothes he covers himself with, the labour by which he makes provision for his several other wants, whatever it may happen to them to be.

Whence then came the banishment of this instrument of frugality from this part of the labour market? Whence but from the sinister interest, to the action of which those on whose will the settlement of the matter has depended, stood exposed: to them belonging the power of location, applied to the official situation to which, on each occasion, the remuneration was to be attached, the higher the remuneration the greater the benefit to themselves: their attachment is to that part of the benefit which was reaped *exclusively* by themselves: not to speak of the benefit produced by the emolument, in its quality of part and parcel of the aggregate stock of the *matter of corruption*—a benefit in which they were but *sharers*.

But (says a common place argument, which, on every such occasion, may be heard from the lips and even from the pens of corruptionists,) screw down a man's remuneration in this way, he will raise it up again by what-

* Namely, the work intituled, "Constitutional Code," &c.

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ever instruments lie within his reach. Answer, that has been given over and over again — True, that's what he will do if it be reduced thus low; but so will he, be it ever so high: and the higher it is, the more effective the power — the greater the facility — it gives him for screwing it still higher and higher, till he screw it up to the height of that of a *king;* and to crown all, to that of an emperor. Look to France — look to Louis Philippe with his Civil List of £360,000 for five months — £864,000 for twelve months. Look to the *United States;* compare the £864,000 with President Jackson's £5000 or £6000 a-year.

So, if what is proposed is that the situation, with the remuneration attached to it, be made a subject-matter of purchase, he that purchases (say they) will make the most of what he purchases: just as high as the profit can be screwed up by him, just so high *will* it be.

Such then is the policy of these same enemies of the community and lovers of themselves: what they refuse to make application of, consists of all the several instruments by the application of which the evil is capable of being reduced: what they do make application of, is the sort of instrument by the application of which the evil is maximized.

Thus it is in the case of the most profusely remunerated of all functionaries, and (such in *his* situation is the nature of man,) naturally most unapt in point of intellectual and active appropriate aptitude of all functionaries: by the half million which is openly and avowedly given to him — by this it is that he is enabled to obtain in the shape of patronage — patronage of needless, and to *us*, useless offices, so many millions, which are not openly and avowedly, but at a vast ulterior expense *covertly*, given to him.

To the application made of this rule, principle, and source of economy, one exception, and one alone, there must be. On the occasion of application made of the securities in question, the existence of antecedent *experience* of the conduct of the functionaries in question in that same situation is supposed and is necessary. But, at the outset of the institution, by the supposition, no such experience can have had place. This exception then is a necessary one. Such at any rate will it be pronounced by those to whom it belongs to determine; and advantageous indeed will be the compromise, if with no other than this exception, they can prevail upon themselves, or be prevailed upon, to give their concurrence to this rule.

To the functionaries *first* located in the several situations in question, let them then assign such remuneration as on the score of its being in accordance with the masses of the matter of remuneration attached to the general run of the existing stock of official situations they would attach, were no such measure of economy as this brought to view: much good may it do them: moderate is the boon that can be claimed for them on the score of assured competence, self-denial and disinterestedness.

4. Fourth instrument of minimization applicable — gratuitousness of the service of deputes during the probationary time — say a twelvemonth.

Refuse to see who can, escape from seeing who can, deny who can venture, the efficiency of this test of aptitude. Of those by whom, in any tolerable degree, appropriate aptitude is possessed, who is there that will decline submitting to it? What danger can there be that by his submission to this test, any diminution of the requisite or desirable share of appropriate aptitude will, in the instance of the functionaries located on these terms, be produced?

Nor less favourable to the interests and feelings of the *individuals* in question will these arrangements be, than to the interest of the *public* in respect of the aptitude of its functionaries. By no individual, who in his own eyes is not able to abide this test — by no individual who is not desirous of its being so — will application of this test be made. Made then, to the satisfaction of all persons concerned, this same application of this same test will be. And on the part of each and every one of those who do not abide it, how small, in comparison will consequent suffering be? "The plan does not suit me," says the man: — or, "I do not choose to serve in it on such terms:" and, of either of these assertions, in what way and by whom, can the verity be contested?

But under *Matchless Constitution*, of those on whom it depends it is the interest that throughout this as well as every other part of the official establishment, the quantity of appropriate aptitude rendered necessary on the part of the several functionaries, should be not the greatest possible, but the least possible, consistently with the keeping the government, and with it their sinister profit in all shapes, from falling to pieces: for, the greater the degree of aptitude exacted and rendered necessary, the greater will be the odds against their several relatives and other *protégés*, — the greater the chance that by their being found not to be possessed of it in so high a degree as their several competitors, they will stand excluded.

II. Second Object to be accomplished, minimization of *delay* in the service rendered to each several suitor.

1. Means of effectuation the first — Assistant Registrars, or say Registrars Depute, superfluous, none.

The number of the functionaries employed

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being given, the degree in which the object now in question is accomplished, will be proportioned to the quantity of attendance exacted of each such functionary: that is to say, as the number of the *days* on which attendance is paid by him in each year, and the number of the *hours* during which such attendance is paid by him on each such day.

As to the number of each man's days of attendance in the year, deductions from the whole number of days in the year are called for, not only by the need of attendance on his *private business*, but by what is due to *health* and *comfort*, as well as by what is understood to be due to religion.

On the score of religion, allowed to each functionary days of non-attendance — say the fifty-two *Sabbath* days, with the addition of *Christmas Day* and *Good Friday*.

Hours of attendance exacted, all those on which suitors in general are inclined to repair to the spot for the purpose of receiving the appropriate service. A precise standard of reference is presented to view by the greatest number of hours habitually exacted at the hands of any functionary in any of the existing public offices.

For the number of vacation days to be allotted for the purpose, this same standard of reference may serve: say as many consecutive days as there are in [four] weeks; subject to the being, in the instance of each individual, dispersed, and placed in different parts of the year, by agreement amongst the several individuals concerned.

In addition to these ascertainable times of absentation, the accidental occurrence of sickness suffices to demonstrate, to any rational mind, the unreasonableness of any reliance on altogether uninterrupted attendance. To *Matchless Constitution* alone does it belong to expose the *most* important part of the business, as in the case of Honourable House, to be put to a stand by sickness on the part of one of its members.

Note here that, in this case as in all others, if for any part of the service rendered by the functionary, instead of or in addition to salary, remuneration were appointed or left to take the shape of *fees*, the purpose here in question will be but too largely frustrated. For multiplication of the fees, maximization will be made of the *number* of the times, and thence of the aggregate of the times, of attendance: with *intervals* between the several times, — and thence of the quantity of delay which each business will experience. This will already (it is hoped) be found sufficiently evident; if not, it may be seen enlarged upon in the work intituled, *Petitions for Justice*, &c.

Note also, that if to the number of the functionaries adequacy be secured as above, a correspondent relaxation in the severity of the obligation of attendance, may be effected without any material addition to the expense. And then it is that, through the medium of the deputation system, the quality of elasticity (so to speak) may throughout the whole field of operation be given to the provision made for the service of public functionaries; always close fitting; always enough, never too much.

III. Third Object to be accomplished — on the part of the several functionaries, aptitude maximized.

Means of effectuation, this one.

In my Constitutional Code, in relation to each of the several official situations belonging to the several departments — legislative, executive (administrational included,) and judiciary, — under the head of *Securities for appropriate aptitude*, provision is made for the possession of that same so highly desirable quality by the several functionaries therein respectively located. Of these same securities, some there are which, being applicable to no other species of constitution than that of a representative democracy, are foreign to the present purpose. On looking over the list of those same *securities*, and more particularly the list of those applicable to the judiciary department, selection has been made of these; and, after the necessary modifications made of them, to fit them for being applied to the sort of office here in question, the list of them is as follows:

1. After the first and original appointment, or say *location*, exclusion put upon all candidates for the situation but such as, in that of registrar depute, have given proof of appropriate aptitude in all shapes, by the exercise of the same functions under the superintendence of a registrar principal.

2. The obligation contracted by the utterance of an *inaugural declaration*, to be pronounced antecedently to entrance into office; and the sense of *responsibility* increased in proportion to the *publicity* of it. As to this, see Constitutional Code, ch. xii. Judiciary, § 29, *Judge's Inaugural Declaration*, when published; and, as a model, in the already-published volume, Vol. I. ch. vii. Legislator's Inaugural Declaration.

3. The interdiction put upon all emolument other than that which in the eyes of all men stands attached to the office by law. See above, Object I. Expense minimized — Means of Effectuation, 3. Remuneration superfluous, none: Object VI. Means of effectuation, 2. *Fees, none* — and Object VII. Burthen minimized: means of effectuation, 1. Fees (as above) none.

4. In particular, interdiction of all emoluments increasing in amount with the increase in length and number of instruments deposited and searched for, and searches made, at the expense of suitors.

5. Single-seatedness of the office: thence,

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integrality and undividedness of whatever *responsibility*, legal or moral, stands attached to the conduct of the functionary in the exercise of the duties of this his office. As to this, see Constitutional Code, Vol. I. ch. ix. MINISTERS COLLECTIVELY, § 3, *Number in an office*.

6. In the eyes of all persons present in the registration-office in quality of *actors* (as they may be called) on the registration theatre, exposure of the tenor of the inaugural engagement, as above.

7. Of his attendance at the seat of duty, the constancy secured by the connexion established (if found or deemed necessary) between attendance and the receipt of official pay. As to this, see Constitutional Code, Vol. I. ch. vi. LEGISLATURE, § 20, *Attendance and Remuneration how connected*.

8. Dislocability of the registrar principal by the king or either house of parliament: by the king, to wit, by an order countersigned by the Lord Privy Seal, with special reasons assigned; by either house of parliament, without any such reasons.

Question 1. Why countersigned by a single high functionary, instead of being made an order in council? — *Answer*. For responsibility; for when, instead of an individual, the so-called burthen of responsibility is laid on a multitude, the pretended burthen is an air-balloon, and the ceremony a farce.

Question 2. Why give this power to the Lord Privy Seal? — *Answer*. On the presumption that the functionary to whom the duty of countersigning the instrument of location is allotted, is the Home Secretary. The essential point is, that the effective power of location and that of dislocation should not be in the same hand. Why? Because the inducement, whatever it were, by which the location had been effected, would, generally speaking, be sufficient to prevent the dislocation, howsoever merited, from taking place; for, by every consideration by which human conduct is commonly on such occasions most powerfully influenced and determined, the *patron* would stand engaged to continue his protection to his *protégé*.

Question 3. Why not give to the Lord Chancellor either the locative power or the dislocative? *Answer*. Because, judging from his relative situation, and from past experience, he would abuse it. It is of the situation, of course, that I speak, not of this or that individual, to the exclusion of others. Not one of you, gentlemen, without fear of the imputation of wishing to give offence, not one is there of you, I can venture to assert, to whose conviction it has not been manifest what injury has been done by equity judges under the pretence of justice, by counteracting the intentions of the legislature, as manifested on former occasions, by the institution of register-offices, involving titles in clouds of factitious uncertainty for the sake of the litigation and the profit wrung by them and their subordinates out of the expense.

On this, as on so many other occasions, need I add, gentlemen, that it is in the fee-gathering system, the syphilis of the law, that all this corruption has its root.

A set of securities, such as the above — this, if anything, is what is meant by the word *qualifications*, application of which having been customarily made when a new office has been established, has of course been made in the present instance.

During the period in which, by reason of the novelty of the institution, there has not been time sufficient for bringing to view the result of the test of appropriate aptitude afforded by service performed in the very occupation in question, an idea which, since the publication of that same code,* has occurred to me is this; namely, that to keep off unapt aspirants — to keep off all those men who in such numbers regarding themselves as being secure against the being obliged to quit, are so ready, for the sake of the emolument, to take upon themselves the duties of the office, whatever it be, — the first year's service should be performed gratuitously. On this plan, a man who felt himself unfit for the office, would be absolutely without motive for seeking it, or so much as accepting it, even if offered: whereas, in the present order of things, destitution for other cause than judgment of *guilty* according to legal forms on conviction of a criminal offence being morally impossible, the consequence is, that in no other shape is any degree of inaptitude sufficient to keep a man out of office, and preserve the public service from the evils to which his incapacity subjects or exposes it.

So much for that which *ought to be*: now for that which *is*. In the character of *securities for appropriate aptitude* on the part of the class of functionaries in question, the supposed *securities*, *customarily* provided under the name of *qualifications*, may, without fear of refutation, be pronounced worse than useless; and the supposed securities provided in the present instance, are of the sort of those which are thus customarily provided.

Of these same securities there are *two*: namely, 1. Aggregation of the candidate in question to a certain class of persons who are occupied in exercising, or endeavouring to exercise a certain profit-seeking profession; 2. Bearing a part in a certain ceremony called the *taking an oath*.

Neither the one nor the other of these supposed securities are *means* in any the smallest degree, conducive to that same declared end.

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* See (when published) *Dispatch Court Bill*, § xi. *Auxiliary Judges*.

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1. The class of men to which the candidate for the office in question is regarded to have been aggregated, is that of *barrister at law*. But, with the exception of *age*, to the power of aggregating a man's self to that same class, no other condition is necessary than the having eat or appeared to eat a certain number of dinners in the same large hall in which other men are, at that same time, engaged in that same occupation.

Among the writings which have for their object the contributing to the instruction of these same men, is one that has for its title, "Jocular Customs of divers Manors." One of these same customs consists in the emission of gas from the intestines, on certain solemn occasions, for the entertainment of the company assembled. The *egesta* in this *latter* case would not, in the character of a *security for appropriate aptitude*, constitute a less appropriate or less efficient one, than is furnished by the *ingesta* in the former case.

2. Now as to the *oath*. As in the nature of the case, so in practice, there are two kinds of oath — the *assertory* and the *promissory*. The one here in question belongs to the *promissory* sort. In the case of the assertory oath, in my *Petitions for Justice*, the worse than uselessness of it has been held up to view, and proofs, uncontested and incontestible, may be there seen of its being so: and, with no less truth may these same proofs be seen applying to *promissory* oath, in the *present* as well as in all *other* cases.

A supposed security which is inefficient, is not negatively and simply useless; it is positively much worse than useless: it is a source of delusion, producing confidence where confidence has no ground to stand upon. So far as it is a security for *any* thing, it is a security for relative *inaptitude*.

On a similar occasion, to Sir Robert Peel, when home secretary, were observations to this same effect presented: presented, but without effect.

It pains me to think, and to have to say — that, on the present occasion, these same observations have been equally unavailing.

Against truths so incontestible and so important, the eyes of *public opinion* will not *always* remain shut; and, no sooner do they open, than any draughtsman, in whose draught either of these same sham securities has place, will be covered with a wrapper of ridicule, in which it would pain me to see enveloped any of the gentlemen to whom I have the honour thus to address myself.

IV. Fourth Object to be accomplished — on the part of the *machinery* of the system, aptitude to be maximized.

Means of effectuation, these —

In the text of the act, do whatsoever antecedently to experience, presents itself as capable of being done towards the accomplishment of this desired purpose. But in relation to the system thus formed, give to the chief registrar the power from time to time to make whatsoever amendments shall, in his eyes, have afforded a promise of being conducive to that end; subject to disallowance either by the King alone, or by either of the two Houses.

For the giving of this initiative and defeasible power of legislation, the reason is at once simple and conclusive. For their guidance, no experience whatsoever will the framers of the act have had, whoever they are. Full experience will have had this same functionary, to whom the trust is thus proposed to be confided. True it is, that if of any other of the arrangements made by the act, the effect were to give to him an interest in the deterioration of the system, together with the power of promoting, at the expense of the universal interest, that same particular and sinister interest, a well-grounded objection would thus be opposed to this same proposed arrangement. But, 1. in the first place, by what has been proposed under the last preceding head, he will be seen to stand effectually purged of all such sinister interest. 2. In the next place, an additional and as yet unexampled security against evil in that shape, is provided by the power thus given to each one of the three component sharers in the power of the supreme legislature.

In several unconnected parts of the bill, as it stands at present, power of making regulations respecting the details of the business is conferred on this same functionary; but, as to the matters in relation to which this power is given, nothing else is done, in and by the bill; nor is any power of *disallowance* given to any authority other than that of the whole legislature. Between the cases in which without inconvenience, power of regulation by the hands of an authority other than the legislature may, and those in which it cannot be given without preponderantly evil consequences, it would not (it is imagined) be easy to draw the line; by the expedient here proposed, all need and all use of any such line are done away.

Eminently unpalatable to the taste, because so eminently and equally detrimental to the particular interest of some of the opposers of the principle of all-comprehensive codification, would the here-proposed arrangement be: dried up by it in no inconsiderable degree, would be the source of the indefinitely lengthy train of amendments upon amendments, with the profit of the branch of amendment-making, which this branch of *Matchless Constitution* has contrived to put into their hands; a profit, which cannot but have had no inconsiderable share in the producing of the opposition which continues to be made to the only arrangement by which anything like complete effect can

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be given to any the most salutary and indispensable arrangements, or individuals be preserved from punishment, for the not doing of those things which it has thus been rendered, and continues to be rendered, impossible for them to do; for how great is the evil, which, in their eyes, would be too great for the whole community to be afflicted with, for the sake of putting any the smallest sum into one of the noble or right honourable pockets? how extensive the conflagration that would be too extensive to be made for the purpose of roasting for him a single egg? But, by a reformed parliament, let us hope, howsoever according to custom the malefactors may be left comfortably wrapt up in impunity, the maleficent practice may be put a stop to.

Of the appropriate and best adapted mode of making amendments in existing regulations, by whatsoever authority made, a description may be seen in the part already published of the proposed Constitutional Code; namely, in ch. vi. Legislature, § 29, *Members' Motions;* and of the mode in which, without detriment to the supreme power of the legislature, alterations may be made by authorities subordinate to it, an exemplification is given in the as-yet-unpublished part, namely, vol. the third, ch. xii. JUDICIARY COLLECTIVELY, § 19, *Judge's contested interpretation-reporting function;* § 20. *Judge's eventually emendative function;* to which reference is made in ch. vi. Legislative, § 34. *Securities for appropriate aptitude*, art. 44.

Having, so far as depends upon me, introduced and applied to this same business the hands which, by situation, will be in the highest degree well qualified for the performance of it, I shall there leave it, and save to myself the time and labour of framing any proposed arrangements of detail for the purpose in question, and to the gentlemen I am addressing, the time and trouble necessary to the taking of any such arrangements into consideration.

V. FIFTH OBJECT to be accomplished — security for the efficiency of the process in question — namely, the process of registration, — maximized.

Means of effectuation, an appropriate all-comprehensive *map*.

Altogether indispensable seems to me to be this muniment; without this for an object or standard of reference — without such an anchor as this to be fastened to, — surely to a vast proportion of the landed property in the kingdom will the title remain floating in the ocean of uncertainty.

In one part of this vast aggregate, the assurances have maps of correspondent extent for their accompaniments; in another part in the vast remainder, no such *means*, or say *instruments* of identification, have place. If necessary or useful in any one instance, where is the instance in which it can be otherwise?

An all-comprehensive original being thus formed, then, of the several parts of it should be taken a copy of each of the several *parishes* contained in the whole territory; with correspondent provision for *extra-parochial* places.

But here a two-fold difficulty presents itself: —

1. Cause of the difficulty, in the first place, the irregularities in the surface of the earth. Exhibited by this surface are all imaginable diversifications of curvature; whereas, in this graphical representation of it, on the only surface which it presents to view, no one of all these diversifications is exhibited; the surface is, the whole of it, in one and the same plane.

2. In the next place comes the entire figure of the earth, considered in its character of a *solid* body — an oblate spheroid — the mode of curvature, the form of its divergence and aberration from a right line, not *uniform* throughout, as in the case of a *sphere*, but *varying*.

General consequence, in a degree more or less considerable, incorrectness in a representation given of the portion of land in question, in every map that ever has been, or ever can be, made of this same surface.

Consequences in *particular*, these.

Where there are maps, in the case of each division of the surface, say in the case of each *mile*, the quantity of the land given by the portion of the all-comprehensive map — the *general* map — would not agree with *that* given by a *particular map* of the same spot, taken without reference made, and regard paid, to the all-comprehensive map.

2. — The number of the products of the next subdivision, say the *acres*, stated in the *title-deeds* as belonging to each proprietor or set of proprietors, would not agree with the number of acres represented as belonging to him or them in and by the corresponding portion of the all-comprehensive map.

3. — All round each mile exhibited by the portion of an all-comprehensive map would be a sort of fringe or *border* which by that map would be represented as belonging to one proprietor or set of proprietors, while by the particular and separate maps, together with the number of the acres as stated in the assurance, they would be spoken of as belonging to a different one.

In every instance in which the same mile is parcelled out between proprietors or sets of proprietors more than one, each would, in and by the number of acres stated in the assurances as belonging to him, together with the maps, if any, with which those same assurances were accompanied, be represented as having a larger part in it than he really has or could have; each would therefore be in

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the assurances *stated*, and in the accompanying map or maps *represented*, as possessing a quantity more or less considerable, which he could not possess but at the expense of the part possessed by the other or others; and thus in every part of the *mile* there would be a portion more or less considerable which would be represented as belonging to two different proprietors at the same time.

69. In relation to this, it will naturally be observed that, by this discrepancy, no actual collision, litis-contestation, or inconvenience, in any shape, is known to be produced: for that by the natural boundaries which have place upon the land itself — that is to say, the hedges, ditches, fences, palings, and the walls, — what portion it is that belongs to each such proprietor, or set of proprietors, is indicated and demonstrated beyond dispute.

True, in so far as *boundaries* of any sort have place, this cause of doubt and dispute is obviated and excluded. But, in every acre in which boundaries are wanting, this remedy to the deficiency has no place.

What then would be the remedy?—*Answer*. It would be thus expressed. Take an account of the number of feet and inches in the actual occupation of each proprietor, or set of proprietors, or their respective lessees: divide, then, in the map, the whole mile into such or such a number of parts or portions: divide the correspondent mile in the all-comprehensive map into that same number of parts or portions situated with relation to one another in the same manner. In so doing, mark their several proprietors as exhibited by each one of the correspondent portions in the all-comprehensive map, the same as those in those which are given by the *number of acres*; and so on in case of any ulterior or minuter division of the land among different occupiers, as in the case of *towns*.

From the adjustment thus made would result the *demarcation* proper to be made in the correspondent portions of the all-comprehensive map; and where, on the land itself, between one property and another, there is not any actually existing boundaries, the lines on which the boundaries ought to be placed.

In the country (or say in French, in the *plat pays*) differences of no greater an amount than that of a few feet would not, generally speaking, be very material. Not so in towns, or in the precise spots anywhere where fixed fences of any kind, more especially those composed of brick-work or cemented stone have place, a man whose fence in any direction had been too advanced, would have to pull it down, and to be charged with the correspondent quantity of expense; and so in the case of water-courses. Other cases might be brought to view; but for the particular example in proof of the importance of the general observation these may suffice.

Think of the expense which, by this course, would have to be produced in the case of a church, or any other similarly expensive public building!

On the continent of Europe, in countries more than one, the thus proposed sort of muniment has actually been brought into existence, and continues to be beneficially employed.

In this country, among the *pamphlets* which of late have been published on the subject of *assurances*, several there are in which this so essential an auxiliary to the efficiency of the main institution is recommended.

In those foreign instances, the all-comprehensive *map** forms an appendage to a correspondently all-comprehensive *cadastre*, as it is called, containing a body of information, of which that which is exhibited in and by the sort of muniment called in English, a *Terrier*, forms a part.

The all-comprehensive muniment called *Doomesday Book*, framed so early as the eleventh century, a short time after the Norman conquest, is a sort of inchoate exemplification, though imperfect and inadequate in the degree that might be expected at so early a stage in the progress of society.

Trifling, in comparison of the usefulness of it, would be the expense of providing this same instrument of general security. For the single purpose of defence of the country, by means of fortifications, against invasion by a foreign enemy, a document of this sort, instituted at public expense, by order and under the direction of the Board of Ordnance, is in considerable advance. Of the total number of counties (in England and Scotland 52,) 18 or 19 are already on sale: among them the two largest, — namely Yorkshire and Devonshire.†

For giving facility to the recurrence made to a representation of this sort, a species of indication, applicable to any map whatsoever, has already been employed and is actually in use. A map with this improvement in it lies before me. It is a map of Paris. The whole surface is divided into parallelograms by lines composing a sort of *lattice-work*. In one direction, these parallelograms, as they follow one another, are distinguished and designated by the letters of the alphabet, *a*, *b*, *c*, &c.; in the cross direction, by numerical figures, 1, 2, 3, &c. In the margins are inserted, one under another, in alphabetic order, the names of the streets and other divisions, preceded

* *Cassini* is the person of whom the muniment of that sort constructed in France bears the name: *Charte Trigonometrique* (if I am not misinformed) the name of the muniment itself.

† If I am not misinformed, offer has been made, either to complete that survey or to make a new one, and construct the hereby desired map for £50,000.

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respectively by the letter and the figure, by the conjunction of which the place or places which the reader is looking for may almost instantaneously be found.

Over and above the information, of which the several parishes and extra-parochial places in the territory in question are the subject-matter, this same document might be made to serve for supplying the like information respecting the division styled *Manors*.

Between parishes on the one part, and manors on the other part, various are the relations that have place: —

1. In some instances they coincide.

2. In other instances, manors more than one are contained, every one of them in an entire state, in one and the same parish.

3. In others again, parishes more than one are contained, every one of them in an entire estate, in one and the same manor.

4. In others again, in which manors one or more than one are contained in an entire state in one and the same parish; to these integers stand attached fragments more than one, which extend over parishes more than one.

5. And *vice versâ*, in other instances in which parishes one or more than one are contained in an entire state in manors more than one, to these integers stand attached fragments one or more than one, which extend over manors more than one.

Various are the signs and devices, by any one of which this relation between the sites of *parishes* on the one part, and *manors* on the other part, might be exhibited to the eye and held up to view.

As to the particular nature, the need of, and benefit derivable from, the ascertainment of the several manors in existence, and the mode in which the obtainment of this information may most effectually and commodiously be accomplished, it belongs not to the subject of *registration*; but some suggestions of mine in relation to it, may perhaps find their place on another occasion under the appropriate head.

"Give me," said Archimedes, "give me but another place to stand upon, and I will give motion to the earth." "Give me," say I, "give me but a map to point to, and I will give rest and quiet to 'all that inherit' this our portion of the earth's surface."

VI. Sixth Object to be accomplished — Extent of the application made of this same security, maximized.

If the institution is productive of *benefit*, who are they who in respect of justice ought to be left destitute of it? — a question this, which assuredly it is incumbent on him to answer, if any such person there be, by whom opposition is made, in any shape, to the utmost possible extension that can be given to this same benefit.

Exceptions, — always excepted are all cases, if any such there be, in which by the *burthen* imposed in all shapes taken together (pecuniary expense included) the *benefit* will be outweighed. But this same burthen — on him by whom the existence of it is alleged, lies the obligation of making proof of its existence; and this obligation he will fulfil, on pain of seeing his silence in relation to it regarded as a virtual confession of the groundlessness of the opposition made by him to the proposed measure.

Means of effectuation, these —

1. Subject-matters of property (moveable excepted) all admitted: copyhold, leasehold, incorporeal; thence, in correspondent numbers, the proprietors.

Is it that the expense is such as would outweigh the benefit? On the contrary, the expense would be next to nothing. Such it was, for example, 1. In the case in which the body of information obtained for the use of Parliament had for its subject-matter the population of England, Wales included.* 2. In the case in which it had for its subject-matter the provision made throughout for the education of the people in Scotland.

Second means of effectuation —

2. Fees (as above) none; avoiding to give to any part of the remuneration the shape of fees.

Question — Why not? *Answer*, short and conclusive; reasons the following: —

1. To all who are unable to pay the price thus set, the service is denied: and, in every instance in which the evidence which by that service should have been preserved and rendered accessible, is for want of such service rendered unobtainable, justice itself is thereby denied.

2. To all those to whom, whether in quality of *incumbents* or in that of *patrons*, in the whole or in any part a profit is suffered to be reaped from this source, an interest is given, and *that* a but too efficient one, in maximizing the amount of it.

The *modes* in which this increase is given to it are these — 1. Increasing the number of the occasions on which each fee is exigible; 2. On each occasion, increasing the quantity of the fees thus exigible; 3. In the case where the service consists in copying a written instrument, or performing any operation in relation to it, and the amount of the fee or fees increases with the length of the instrument, increasing the length accordingly; 4. If to the rendering of the service a journey is necessary, giving increase to the number of such journeys, and to the length and expensiveness of each.

Thus, upon every occasion is addition to an unlimited amount made to the *expense*.

* See Return intituled Parish Registers; Honourable House papers, date of order for printing 25th and 30th March 1831, No. 293.

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3. So as to *delay*; where and in so far as the means employed for making addition to the profit consist in making addition to the number of the occasions on which the fee or fees are exigible, a means contributory to the effect is the minimizing the quantity of the service on each occasion performed, that the number of successive days on which it comes to be performed may be maximized: here then there are so many intervals of delay produced. Moreover, in instances to an indefinite number, so it is that by addition made to the length of the interval between occasion and occasion, addition may be made, and accordingly is made, to the number of the occasions on which a fee or fees are exigible, and accordingly exacted.

4. When, and in so far as this is the shape in which the remuneration has place, the *amount* of it is in a perpetual state of uncertainty; and, whatsoever be the most proper amount, from this same proper amount it is continually divaricating; being almost always, and to an indefinite extent, either too great or not great enough: at one time the public is suffering by the excess; at another time the functionary is suffering by the delinquency.

5. When this is the mode of payment, the amount of the emolument and the sources from whence it flows, are kept concealed from the public eye; and the application of the check which by that all searching instrument would be opposed to abuse is thus averted.

True it is, that by the institution of the *fee-fund* already mentioned, the efficiency of the inducement to make addition to the expense is more or less diminished, and may even be extinguished altogether. But of its being extinguished altogether, there can be no adequate ground of assurance. For so long as by and from the hands of individual suitors benefit in any shape is expressly allowed or may be received without danger, so it will be; and however strong, and in appearance sufficient, the door may be which is shut against it, crevices will be found or made in this same door, and at these crevices emolument will flow or ooze in.

True it is again, that saving the above exceptions, a limit being thus put to the amount, expense in excess — in one word, *depredation* — is so far successfully obviated. But the eye of the public being thus excluded from the scene, abuse in other shapes is thus left without controul: for example, that oppression, which, without benefit rendered by it in any other shape to the oppressor, may be practised for the gratification of pride or enmity.

In a word, in no shape whatsoever will benefit be shown to flow from the giving this shape to the mass of official remuneration, or any part of it.

For the producing of a *semblance* of benefit — for the producing in the mind of the public a notion of the existence of benefit in some shape or other, — the word *alacrity*, or some equivalent locution, has been employed. But by no person has any attempt been made to show — by no person will any successful attempt be made to show — that benefit in any *determinate* shape has ever been experienced by any person from this source, nor how it is ever likely to be experienced.

In the case of the *fee-fund*, completely is the door shut against this supposed benefit. Emolument, none; alacrity, none. The sole assignable cause ceasing, so does the effect.

Put aside the *fee-fund*, thereupon comes into consideration the nature of the service in the several shapes in which remuneration in this shape is desired to be attached to it. Let any one by whom the benefit is supposed to have place, look into the service in each case, and say how it is that from the attaching to it remuneration in this shape, benefit, in the alleged shape or any other, can be seen to follow.

Let him look out for the several *interessees*; for the parties whose interest is any way affected: these he will find to be on the one part the several suiters, who, in person or at a distance, have need to hold intercourse with the several functionaries; on the other part, those same functionaries; and as to the *suitors*, they will be seen to be either — 1. Persons applying to have their documents or information thereof received into the archives of the offices; or, 2. Persons having need, or being desirous of making inspection into or inquiry concerning the contents of those same archives.

True it is that under the *fee-fund* system, while the functionary is secured against *loss*, he has, in some cases, a chance and hope of *profit*; and in that hope a source of *alacrity*. But what an atom of good is this to set against the weight of the evil which has been shown to have place in the other scale!

Note that for the tutelary inspection performed by the eye of public opinion, a continual demand will be created by the danger lest, by a conspiracy between the functionaries on the one part, and solicitors or other agents of suitors on the other part, additions be made to expense, and for that purpose to delay, as above.

Shocking, in the extreme, to the delicacy of gentlemen in both these situations will, of course, be any such suspicion. But what has happened once may happen again; much more what has had place universally as well as constantly. How it is that by a conspiracy between the species of judges styled *Masters in Chancery* on the one part, and the solicitors of parties on the other part, may, to an enormous amount, have been habitually,—under and by virtue of the matchless corruption

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engendered and fostered by Matchless Constitution, — a pitiless extortion obtained from suitors on pretences knowingly false, and justice thereby to all but the very few denied, and to the few sold, has now not only been completely authenticated, but rendered universally notorious. And whether the fountain of this corruption be yet dried up, let any one who is so minded speak.

On this subject, matter may be seen in various works of mine, but more particularly that which is entitled "Justice and Codification Petitions," &c.; for on most points close is the analogy between the sort of official service by which what is called justice is administered, or professed to be administered, by the judges and their subordinates, and that by which pre-appointed written evidence is registered. The case is, that the sort of service rendered by the functionaries belonging to a register-office of the kind in question, is, as elsewhere observed, subsidiary to the sort of service rendered by the functionaries who are considered as belonging to the judiciary establishment, and is liable accordingly to abuse in the same shapes produced by the same causes.

3. The *manifold* mode of writing employed: thence (besides the production of other beneficial effects to a vast amount) by reduction made in the expense, contribution made to the maximization of the number of the persons to whom the benefit of registration is imparted.

In an essay of mine on the subject of the late Mr. Humphrey's work on *Real Property*, is contained a description of this invention, with a detailed explanation of the uses to which, in the field of *registration*, it is capable of being applied. This essay made its appearance in the form of an article in the Westminster Review, No. XII. for October 1826; and, having reserved some numbers for gratuitous distribution, I took the liberty of presenting a copy to each of the gentlemen to whom, in their quality of Commissioners of Inquiry into the Law of Real Property, this paper is addressed. Of all these copies the receipt has been acknowledged.

Of a contribution so highly important as this invention seemed to me to be to that service to the cause of justice, the conferring of which was the purpose of the commission given to them, to find no notice taken was to me a disappointment of no ordinary severity. But, at present I have in hand a security for the cognizance which they will take of it; I mean, the engagement which I set out with begging their attention to — an engagement, fruit of that public spirit by which they stand so eminently distinguished — I mean the engagement to give publication in their reports, to whatsoever suggestion I shall have submitted to them for that purpose.

Here follows, then, of that same article, such part as regards the *manifold* mode of writing. [*Here follows the passage, from* "Now as to Registration" *near the end of* p. 405, *to* "Marriage Settlement," *near the beginning of* p. 408, *antea*.]

Gentlemen, you have read what is above. I now call upon you — I hereby call upon you — either in your report or proposed law, to give to that instrument of justice and security against fraud on one part, and ruin to countless individuals on the other part, the attention and employment so incontestibly due to it, or *if not, to say why not;* for, on the score of conciseness, this locution I am content to borrow even from the judicatories which by so sad a misnomer call themselves *Courts of Equity*.

Yes; fixed upon you already is the public eye; and under the sharpened eye of a reformed parliament, fastened upon you it will be with unprecedentedly searching energy.

Pretences, indeed, I have heard — reasons I will not call them — the name of *reason* I will not profane with them — *pretences*, then, I will call them; but such pretences — I am ashamed to think of them. I am ashamed to think from what lips it is that I have heard them. Name those lips I will not: they were such from which I should have hoped for better things. "Of any such number of copies (said the voice) — of any greater number of copies than are at present in use there is no need. The remuneration for skill in a laborious profession ought not to be cut down too low." Then there is the *paper* — the paper not white enough — the ink not black enough. In a word, the thing was (I found) an innovation — the offspring of theoretical fancies — instead of conformity forming a perfect contrast to the precious fruit of ancestor-wisdom — the existing practice. As to practice, true it is it had already been in use for years. In use? — but with whom? Is it for official dignity to put itself to school? — to school? — to the school of a newspaper?

So much for the arguments against the use of this instrument of security against forgery and of reduction of expense. Now for some matters of fact, some states of things, in favour of it.

1. First, as to the notion about *uselessness*. I turn to the masterly and admirably-instructive work, the gratuitously-distributed volume of one of your number, Mr. Tyrrell, intituled, "Suggestions to the Commissioners appointed to inquire into the Law of Real Property." In it I read the following passages: —

Page 263. "If it be thought improper to take the custody of *wills*, which may include any personal estate, from the Ecclesiastical Courts, *office copies* of them might be registered upon being authenticated by an affidavit made by the officers who have examined them,

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and heavy penalties should be imposed upon them in case of negligence in overlooking a mistake. *The errors in the official copies made at Doctors' Commons are so frequent*, that few counsel will venture to advise upon an obscure will without requiring to see the original, or requesting the solicitor to ascertain the accuracy of the copy. I have met with several instances of important mistakes. In one office copy which was examined with the original by my desire in the last year, four verbal errors were found in about as many lines, every one of which altered the interest of the devisees."

Page 264. Speaking of Judgments: "They are not binding, under the present act, upon lands in a register *county* until they have been registered in that county, and in like manner they should be required to be registered separately with respect to *every different county* in which there may be estates intended to be charged with them, and not to be effectual as against *other securities or assurances* of lands in such county which may have been previously registered."

That which it seems clear to me was, on this occasion, contemplated by Mr. Tyrrell, is — an indefinitely repeated process of registration; and, if this be really what was meant by him to be proposed, the consequence is, that in relation to the demand it presents for the manifold mode of writing, it makes no difference where the scene of the operation lies: whether in one and the same edifice or in so many different edifices. I say in so many different edifices, or at least in some considerable number of different local edifices: for, as between the one plan and the other, the option is (in p. 274) stated by him as hanging nearly *in equilibrio*.

Page 275. "An official copy of any deed, will, or other document might be given to *any* person entitled to an interest in the estate, and might be signed by the two clerks, by whom it may have been examined with the original, and who should be liable to a penalty for every mistake in it."

So says Mr. Tyrrell. Now then for a few questions to him: —

1. To the number of the *persons* to each of whom it may happen to have an interest in this same estate, what is the limit that can be set?

2. Accordingly, what is the limit that can be set to the *number* of the *copies* which on this plan might be needful? with a fee for each? — a fee increasing with the length of each such copy?

3. Or to the number of the fees, payable in respect of these proposed *double* attestations?

4. Or eventually to the number of the *mistakes* to which it may happen to have been made, with fees for the several persons employed in the correction of those same mistakes?

Not to speak of the quantity of time consumed in the discovery of the *error*, and the applying the *corrective* to it.

5. On the supposition, that in lieu of the ordinary mode of taking *copies*, *exemplars* — all of them equally entitled to the appellation of *originals* — were taken in the manifold way, what possibility would there be of any *one* such mistake?

True it is, that, supposing the number of such exemplars to exceed 14, there would not be a possibility of furnishing an exemplar to each of the persons in question, without the necessity of a transcript from the original set of exemplars; in which extraordinary case a possibility of mistake would have place; and perhaps it might even happen that the number in which in this case the marks were sufficiently clear, might not be quite so great as that of the *copies* taken. But in this case nothing could be easier nor more efficacious than the remedy: namely, a few words written on one of the leaves of the ulterior *batch* or *batches*, stating them not to belong respectively to the *first*.

Page 273. "The duplicates of registers of births, marriages and deaths, should be kept in the public office for the county in which they may be made."

To this passage applies with equal propriety the observations made on the passages in p. 263 and 264; in which observation is stated the ground on which I concluded that what he assumed the existence of was, on each occasion, a not improbable demand for indefinitely large numbers of copies.

Page 276. "An official copy of any deed, will, or other document, might be given to *any* person entitled to an interest in the estate, and might be signed by the two clerks by whom it may have been examined with the original, and who should be liable to a penalty for every mistake in it."

Thus far Mr. Tyrrell. Now then say I. — Where is the man that will undertake to set any and what bounds to the number of the copies which for this purpose it may happen to a *will*, for example, to present the need of, with the skilled labour necessary to the examination applied to *each* of them? that skilled labour to the inadequacy of which to the purpose of preventing evil consequences to an indefinite extent, you have just been seeing him bear such ample testimony? On the other hand, see how the case stands on the supposition of the writings being performed in the manifold mode: 8, 10, 12, or even if necessary as many as 14, written by one and the same hand, at one and the same time. I say 14: this is capable of being done; for this has been done. If of the whole number any one is correct, so are all the rest. If in any

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one there be any error, that same error has place in all the rest; and for the detection of it in them all, no skilled labour is necessary or of use.

Then as to the correction of these errors. With pen and ink, in the common way, correction made in the manner in which corrections are made in a *proof sheet* in printing having been made in any one of them, the number of words the aggregate of these corrections consisted of, would be all that would be to be copied in the others; and of these errors — one or all of them — how great soever may be the importance, not frequently can it happen that the number should be very considerable.

When the worst comes to the worst, all that would be to be done is, the copying over again such of the *leaves*, and such of them only, in which the errors make their appearance. And this is one advantage resulting from the moderateness and uniformity which may be given to the size of the leaves, whereas for anything that appears in the bill, the documents sent into the office for registration may be of the great and greatly diversified extent of which papers and skins of parchment are susceptible.

Page 278. "It would be convenient to require that every deed, will, or document, brought for registry, should be accompanied with a short *synopsis* or statement of the contents; in order that, when found to be correct, it might be copied into the register book, as a marginal index to the copy of the instrument, and also with such other description of the nature of the document as ought to be inserted in any of the indexes or books of reference."

Supposing the sort of abridgment in question to be of use, and for facility of conception (it should seem) it would be — for so it is in the case of a bill and an act of parliament, it might be ordained to be made in the original, in which case it would have place of course in each of the several exemplars of it. But a standing and universally-applying rule should be enacted, declaring that no words employed in the abridgment shall be understood as influencing the construction to be put upon the text at large.

Will it be said that by the employing exemplars of the whole of each document instead of the proposed abridgment, the bulk of the aggregate number of the deposits would be swelled to such a degree, that the expense of the buildings necessary for the reception of them would be so great as to constitute a decisive objection against the use thus proposed to be made of the manifold mode? At any rate, this objection would not lie in the mouth of any man to whom (as in p. 275) the choice of having a building for each one of the forty-two counties, and the having but one for all the counties together, is stated as being nearly a matter of indifference.

On the plan proposed in the above extract, here would be for learned gentlemen the profit, and for unlearned parties the expense, of skilled labour to be employed in the drawing of these same synopses with the danger of errors therein occurring, and the certain expense of corrections to be applied to these same errors: in the case of the manifold exemplar of the document at large, no demand for any such synopsis, nor any possibility of any such errors.

Page 278. "The office," he goes on to say, "might be divided into two departments, one for ascertaining the authenticity of documents proposed to be registered, and the other for preserving and affording facility of reference to them; and they might be so regulated that the one should afford a check against negligence or error in the other. The latter department might be divided into as many different offices as there are counties or ridings, including the cities and towns, which are counties of themselves in the districts in which they are locally situated: and there might be an additional office for such documents as relate to more than one county."

Thus far Mr. Tyrrell. For my part, I do not clearly perceive the utility of this reduplication of the expense: still less the preponderance of the benefit in this case over the burthen: all that in relation to this matter I do clearly perceive is — that, by the use of the manifold, the expense, whatever it is, would be nearly, and the danger of error altogether, done away.

So much as to the notion about *needlessness*.

In fine, to the employment proposed to be given to the manifold mode of writing, is there now any really operative objection, other than that which is opposed by the *fees*, which by it would be kept out of the pockets of learned gentlemen, and kept from taking their departure out of the pockets of unlearned suitors?

While writing this, I am also employed on my plan for extinguishing the factitious *delay*, factitious and mis-scaled *expense*, with the thence-resulting *sale* and *denial* of justice. The *manifold* mode of writing applied to the minutation of evidence, is a means and instrument altogether indispensable, the employment of it a condition *sine quâ non*, to the giving to that unspeakably-important benefit the degree of perfection it is susceptible of: and of its usefulness with reference to that ulterior purpose, mention may be seen hereinabove made.

By adopting and exemplifying these my suggestions in relation to it, it depends upon you, gentlemen, to bring under the eyes of all whom it may concern, a demonstration of its

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practicability and usefulness, for that the most important of all purposes.

The subject-matter committed to our consideration (says somebody) is, *not* how justice may be administered at least expense, but how the respective owners of what is called *real property* may be best secured against the loss of it. True: but if the instrument in question, be it what it may, is good for the purpose in question, its being also good for another purpose, or for other purposes in any number, is most assuredly, to any intelligent mind, no reason why use should not be made of that same instrument to that same purpose.

Yes: should it (which I ardently wish that it may not, and venture to hope that it will not) be my misfortune, gentlemen, to see you wilfully suffering this grand instrument of justice and security to remain unemployed, for want of any endeavours on your part to give adoption and support to it, and the community to remain destitute of the benefit of which it affords so bright a prospect, — parliament, and through parliament, or without parliament, other nations as well as this shall hear of it; and to the latest posterity the shame of such a wilful neglect shall lie on the heads to which it belongs. No; never so long as I have a voice, or a pen, capable of giving utterance to these my wishes, — never shall cease my endeavours for the adoption of it — my incontestably just reproaches for the neglect of it.

VII. Object the Seventh. — Minimization of the burthen in the shape of expense, with which the benefit produced by registration is clogged.

Means of effectuation, these —

1. Burthen transferred from individuals to public.

The burthen thus transferred from the shoulders least able to the shoulders most able to bear it.

In the shape of *fees*, unless proportioned in each instance to the pecuniary ability of the individuals at whose hands respectively they were called for (which is what they could not be,) the burthen would, in so far as paid, press on each individual with a weight of affliction more and more heavy, in proportion as he was less and less able to bear it; and, in individual instances to an indefinite number, the individual not having wherewithal to pay the fee or fees, would exclude him altogether from all participation in the benefit of the institution.

For, to the smallness of the value of the subject-matter in question, no limit can be set.

In regard to *feelings*, what the smallness of the value in question is too apt to do — indeed, to a greater or less degree, it may be affirmed, has accordingly done, — in the breast of every public man by whom the matter has ever been taken into consideration, is, to diminish the idea of the pressure; and *that* in such sort as to exclude from his affections all regard for it: unhappily no such effect has it upon the feelings of the individual who is thus dealt with.

2. *Fees*, as above, none: remuneration of the functionaries, the whole of it, in another shape; namely, that of *salary*.

Of the importance of this object, considered in another point of view, namely, the minimization of the *expense*, whatsoever be the shoulders on which it is laid, — a view has been already given; that is to say, under the head of the first object — Expense minimized.

3. *Means of communication* for documents and other writings, the *letter-post*: thence, expense of separate communication through skilled labour, saved.

In the bill, I have the satisfaction of seeing this mode of communication ordained to be employed. How well adapted it is to this purpose, and how prodigious the saving made by it, in comparison with that mode of communication, by *special messengers*, which is employed where law proceedings are the subject, has been abundantly shown, and is much too abundantly felt.

In a work of mine, intituled *Petitions for Justice and Codification*, — namely, in p. 158 of the *Petition for Justice*, art. 9, of the part, which has for its subject-matter the *judiciary establishment*, — a proposition to this effect is contained: "That, for trustworthiness and economy," (says the passage in question) "the business of *message*-carrying be, as far as may be, performed by the machinery of the *letter-post*."

Gentlemen! I have now said my say. For your part, you have a choice to make: you will either break your engagement and consign these pages to oblivion, or keep to your engagement, and to this address, presumptuous as it is, give publication in your next report. *Dixi*. Jeremy Bentham.

Queen's Square Place, Westminster,
4th July 1831.

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JUSTICE AND CODIFICATION PETITIONS:

BEING

FORMS PROPOSED FOR *SIGNATURE*

BY ALL PERSONS WHOSE DESIRE IT IS TO SEE

JUSTICE

NO LONGER SOLD, DELAYED, OR DENIED:

AND TO OBTAIN

A POSSIBILITY OF THAT KNOWLEDGE OF THE LAW,

IN PROPORTION TO THE WANT OF WHICH THEY ARE SUBJECTED TO

UNJUST PUNISHMENTS,

AND

DEPRIVED OF THE BENEFIT OF THEIR RIGHTS.

DRAFTS FOR THE ABOVE PROPOSED PETITIONS,

BY JEREMY BENTHAM.

ORIGINALLY PUBLISHED IN 1829.

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JUSTICE AND CODIFICATION PETITIONS.

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ADVERTISEMENT.

CONTAINED in the present publication are three papers:—

Paper the first, Proposed Petition for JUSTICE, at *full length*.
Paper the second, Proposed Petition for JUSTICE in an *abridged* form.
Paper the third, Proposed Petition for CODIFICATION.

I. Petition for JUSTICE at *full length*. Parts of it these:—

Part I. *Case made:* — Grounds of the hereby proposed application to the House of Commons: inaptitude, to wit, of the existing system of judicial *procedure*, with reference to its alleged and supposed ends, as also of the judicial *establishment* occupied in the application of it: proofs, the several heads and instances of abuse and imperfection, which are accordingly brought and held up to view.

Part II. *Prayer consequent:* — Remedy proposed, for the disorder composed of those same abuses and imperfections.

Prayer, its parts,—

Part 1. Outline of the proposed *judicial establishment*.

Part 2. Outline of the proposed system of *procedure*. Model, the *domestic* system: that, to wit, which is pursued of course by every intelligent father of a family, without any such idea as that of its constituting the matter of an art or science: sole difference the necessary enlargement and diversification, correspondent to the difference in magnitude between the two theatres.

II. Petition for JUSTICE in an *abridged* form. Parts of it these:—

Part I. Abridgment of the *case* part of the full-length petition.

Part II. *Prayer* part. Matter of it the same, word for word, as that of the full-length petition: reference accordingly sufficient; repetition, needless.

Reasons for the two different forms, these:

1. In the full-length petition, number of the pages, as will be seen 207. Cumbrous would an instrument of this length be, if presented in the only *form* in which it would be received, — cumbrous, and *that* to such a degree, that its bulk might of itself be found an insurmountable obstacle to its being carried about for signature. This form is — that of a roll of parchment, composed of skins tacked on, one to another; length, whatever is necessary for receiving the signatures, in addition to the matter of the petition.

2. Compared with that of the abridged instrument, the expense of the operation of engrossing would of itself be a serious obstacle.

3. *Readers* in greater numbers — *readers* and thence *signers*, may of course be expected for the shorter than for the longer instrument: to each reader the two will here present themselves for choice.

For *reading*, the instrument presented to a person looked to as disposed to promote the design, will be of course a printed copy of this work. In this way it is perusable by any number of persons at the same time; while,

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if there was no other copy than the above-mentioned roll, years might elapse before this instrument could pass through the number of hands in succession, to each of whom a single day might suffice for the perusal of a copy of it.

III. Petition for CODIFICATION. Intimately connected is the subject-matter of this petition with that of the petition for *justice*. No otherwise than by codification can the reform here prayed for — or any effectual reform in any shape — be carried into effect. A petition, in the terms here seen, having been honoured by the approbation of Mr. O'Connell, has by that gentleman, as a letter of his informs the author of these papers, been put into the hands of the *Catholic Association* for the purpose of its being circulated for signatures.

Of this publication — the ultimate object being the engaging Parliament to take into consideration the subject matter of it, the immediate and instrumental object is, the engaging individuals to concur, by their signatures, in the endeavour to induce Parliament to take the desired course.

Persons looked to for signatures, who? Answer: Every person, in whose breast any such desire has place as that of seeing made, in relation to any subject-matter touched upon by it, any change not looked for by him from any other source: any change whatsoever, be the complexion of it ever so different from, or ever so opposite to, that of the change here proposed.

What? (says somebody) — co-operation expected from persons entertaining desires directly opposite? Yes, even from them. How so? Because, supposing Parliament taking the matter into consideration, — to each person, for the seeing such his own desires gratified, would thus be afforded a chance, such as he would not possess otherwise.

But if, at the hands even of persons entertaining opposite views and wishes, such co-operation may not unreasonably be expected, with how much stronger assurance may it be expected at the hands of persons whose views and wishes are more or less in accordance with what is here endeavoured at?

Now as to the ground of expectation in regard to Parliament. This is the distinctive character of the present work, presenting, as it does, in addition to the statement, and that an all-comprehensive one, of the alleged *disorder*, a proposed *remedy*. So far as regards the mere disorder, the work is an operation, an easier than which could not easily be found: at no time can any hand be incompetent to it. While, in any such task, as that of the exhibition of a remedy so much as approaching to co-extensiveness with the disorder, no ground appears for supposing any other hand at present engaged, — or, without invitation, likely in any way to engage.

This or none, such alone is the option presented to every person on whose part any disposition has place to employ his signature in applying to the disorder its sole possible remedy. To wait till a draught to this extent presented itself, to no part of which he saw anything to object, would be to wait till the end of time!

In regard to codification, included in the object of this publication, is, it will be seen, not only the presenting to view the fruit of the author's own labours, but the engaging other candidates in the greatest number obtainable in the same, so supremely and all-comprehensively important, service.

Nor to this purpose is the same sanction of authority altogether wanting. By implication at any rate, codification has in its favour the declared opinion, and recommendation of the Real Property Commissioners: witness the questions circulated by them. Sufficiently manifest at any rate is the recommendation, while, in pursuance of their labours, something should be done. But by Parliament, whatever it be, either by codification or not at all, will it have been done: and whatever be the length to which this indispensable operation has been carried — why it should stop there or anywhere short of completion, is a question to which it rests with any declared opponent of codification to find, if it be in his power, anything like a rational answer: by his refusal to answer it, or his silence, in relation to it, judgment of inconsistency against him will be signed.

These things considered, requisite assurances are not wanting, that as soon as the press of more urgent business admits, the matter of both petitions will, by appropriate motions, be brought to the view of the Honourable House.

Instructions as to the mode of proceeding for obtaining signatures.

Provide a skin of parchment, tack to it, one after another, others in sufficient number to contain the matter of the petition, with the addition of signatures in such number as you expect to obtain for it. A thing desirable is, that all persons who join in the petition may be distinguished, each one from any other: for this purpose, let each subscriber add to his name at length an indication of the place of his abode. If it be where there is not a town, the name of the county and the parish will be the proper mode of designation: if in a town, the name of the town, with that of the street or other mode of address, employed in sending a letter by the *post*. To save bulk and expense, — divide the roll into parallel columns, each of them wide enough to receive a signature of an average length, in which case, when it exceeds that length, two lines will always be necessary, though commonly sufficient. To each signature prefix a number expressive of the order in which it stands.

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As to the instrument thus employed — in general, if not exclusively — it will be the *abridged* petition: the *full-length* petition being much too large, and the transcription of it too expensive, for general use. To any person disposed to use his endeavours to obtain signatures for the longer petition, should it present itself as being too long, an easy operation it will be to strike out of it such parts as, it seems to him, can best be spared. Where any *abridged* petition is the one employed — in this case, a copy of the petition at length, as printed, should be left with the person applied to, that he may peruse it, if so inclined, before the roll is put into his hands for signature.

Of the opposition which every such coadjutor has reason to expect, it is material that he should be sufficiently aware. From all persons to whom any change in the existing system would be an object of regret, such is the reception which should of course be looked for and provided against: and in this number are included of course all those by whom, to any amount, in any shape, in any way, direct or indirect, profit is derived, or thought by them to be derived, from any abuse or imperfection, to which, by the proposed draught, a remedy is endeavoured to be applied: more particularly all attornies or solicitors, as of late years they have been called, and persons especially connected with them by any tie of interest or relationship, not to speak of judges, other persons belonging to the judicial establishment, and barristers.

Nor as to the whole class, and its several ramifications, let it ever be out of mind, that, on their own principles, by their own showing, being incontestably interested, they are, one and all, in relation to this matter, not to speak of so many other matters, to use their own language, so many incompetent, incredible, and altogether inadmissible witnesses.

Of this publication one natural effect is the producing addresses, in one way or other, to the author, from correspondents, to the number of whom no certain limits can be predicted, and which, if precautions were not taken, might be such as to be oppressive. For, so it is, that whatever probability there may be of the presentation of *petitions*, or though it were no more than a single petition, in the course of the present session, the like probability may continue during an indefinite length of ulterior time: but for the arrangement thus requested, this publication might therefore have for one of its effects the imposing upon the author a charge to an indefinite amount, and not terminating but with his life.

On this account it is requested that no communication be addressed to the author but through the medium of the bookseller: nor to the bookseller, but either post paid, or accompanied with an order for a copy of the work.

Lastly, as to the usefulness of this production, and the endurance of which it is susceptible. To those whom the design may be fortunate enough to number amongst its well-wishers, and the production among its approvers, a consideration that cannot fail to be more or less agreeable is, — that, whatsoever may be its capacity for attracting signatures, the same may remain to it during an indefinite length of time: and that so long as the remembrance of this publication lasts, no one to whom the existing self-styled instrument of security is a source and instrument — of depredation, of oppression, in a word, of *injury* in any shape, can be in want of a ready vehicle for the communication of his complaints.

PRELIMINARY EXPLANATIONS NECESSARY TO BE FIRST READ.

1. In the introductory advertisement will have been seen, the consideration which gave birth to the proposed abridged petition for justice, in addition to the full-length petition.

2. When that advertisement went to the press, the drawing up of the abridged petition had proceeded about half way: and, from the progress at that time made had been deduced an assurance, delusive as it has proved, of completing it within the desired compass: the compass, both as to *time* and *space*.

3. From that time, the further this part of the work went on, the less apposite was perceived to be the appellative *abridged*, by which it had been originally designated: till, at length, instead of the one operation *abridgment*, four distinguishable ones — subtraction, addition, repetition, substitution, — were the operations found to have been performed.

4. Of this variety of operations, — imperfection, in respect of clearness, conciseness, and methodical order, on the part of the draft, considered as a literary composition, has been the indispensable consequence. But, should it be seen, as the author trusts it will be, that without detriment to the practical purpose, no different course could have been pursued, — no material dissatisfaction on the part of the reader will, it is hoped, have place.

5. Practical *end* or purpose, — change for the better: *means* employed, — maximizing the number of the persons known to entertain the desire of seeing such change take place: *mode* of making this desire known, —

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attachment of each one's signature to some copy of a petition praying for such change.

6. Now, then, for maximizing the number of signatures, one means is — the maximizing the number of copies, offered for the reception of those same signatures. But, by the bulkiness of the aggregate mass of the matter by which the *reasons* for the change stand expressed, will the end and purpose be obstructed? No: it will be promoted. How so? *Answer:* Because the instrument may be cut into smaller instruments, in any number, to each of which, signatures may be found obtainable, from persons from whom this expression of concurrence would not have been obtainable for any one other of these same component parts, much less for the whole.

7. Now, then, as to the particular use and purpose of the two here proposed instruments — full-length and abridged petitions — taken together. This was — the maximizing the number of the arrangements in the existing system, seen by the several readers to be adverse to the ends of justice; to which end, a means manifestly conducive was — the tying up, as it were, of those same arrangements into bundles, characterized and distinguished from each other by appropriate names. This, accordingly, is what has been done by the list of *devices*.

8. Considerations, showing the course actually pursued to have been the most conducive that *could* have been pursued, the following: —

9. In proportion as the operation went on, — matters of detail, deemed, all of them, contributory to the common ends, but which had not, all of them, presented themselves at the time of drawing up the first-drawn petition, — came into view. By exclusion put upon any of these additional grounds and inducements, would the chance for the attainment of the common end have been increased? No, surely.

10. True it is — that, in the ordinary case of an abridgment, — between clearness and conciseness, a mutual repugnancy has place: as conciseness is increased, clearness is diminished. But, in the present case, happily no such repugnancy has place: no mutual counteraction but what is capable of being effectually got rid of. Decomposition, as above, is the operation by which this reconciliation is capable of being effected; and is accordingly here proposed to be effected.

11. Now as to the course which may be seen *actually* taken, as above, in pursuance of the *design* of abbreviation. *First* came *condensation;* as in the ordinary case of an abridgment: *then*, simple *elimination*, or say *subtraction*, applied to certain *paragraphs* belonging to the device *in* question: *lastly*, *elimination* applied to the *whole* of the matters contained under the head of a Device. In this last way may be seen dealt with three devices: namely, Device XI. *Decision on grounds avowedly foreign to the merits;* Device XII. *Juries subdued and subjugated;* and Device XIV. *Result of the fissure* (in Device XIII. mentioned) *groundless arrestation for debt*. As the pressure produced by the influx of additional matter increased, these more and more efficient modes of reduction may be seen successively employed.

12. The two drafts taken together being in this state, comes now the question — of the compound mass — any and what portion is there, that can with truth be pronounced useless? Answer, Yes: namely, the aggregate of the paragraphs reprinted without variation.

After this deduction, every other assignable portion of the matter may be stated as having its use.

13. The case in which, if at all, the correctness of this proposition will be most questionable, is that in which, of two paragraphs, the one is, as above, but a *condensation* of the other: but, even in this case, so it may be, that the one of them may be the most apt in the eyes of one set of proposed subscribers; the other, in the eyes of another such set.

14. In the disposition made of the matter of the *original* draft, — and thereafter of that of the *abridged* draft, — a *method*, as serviceable as it was in the author's power to give, has been given to it. But now — take the worst case that can have place. Suppose nothing to have place that can have any claim to the appellation of *method:* — the whole matter — is it useless, and the labour thrown away? By no means.

15. For, the purpose being to prevail upon the constituted authorities to take the whole of the mass of existing law in question for the subject matter of consideration — and this for the purpose of reform and amendment, — of no blemish in any shape, can any indication, in any language or form, be given, that will not be more or less contributory and conducive to the purpose.

16. Upon the whole, — proposed for the choice of all persons, disposed to be contributory to the proposed design, by framing drafts for circulation, for the purpose of obtaining signatures, will be — the *options*, examples of which are the following: —

I. To employ the *full-length* draft, without alteration, as it stands.

II. To employ the *abridged* draft, without alteration, as it stands.

III. To employ either draft, with amendments, such as may appear meet: amendments, whether additive, subtractive, or substitutive.

IV. To form drafts of their own; composed of matter — none of it contained under any of the heads employed in the above drafts.

V. To form drafts, composed of matter of

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their own, with or without use made of those same heads, and with or without insertion, *declaredly* given to more or less of the matter contained under them.

VI. To frame drafts composed of matters exclusively their own, without reference made to, or use in any way made of, any part of the matter contained in either of these same drafts.

17. Of these several options (to which others might have been added) the one last mentioned (it will of course be supposed) is not of the number of those which the author expects to see embraced. But, even supposing it were, — whatsoever be the number of the drafts, thus framed, and, with attached signatures, presented to the constituted authorities, — correspondent will be the service rendered to the cause of reform and improvement by these pages.

18. A lottery (suppose) set up; and paragraphs of the abridged petition, some or all of them, drawn out of it, and written down on the roll in the order assigned to them by *fortune*, — even in this case, a petition, so framed and thereupon signed, would not be altogether without its use.

19. So long as that most all-comprehensive, most grinding, and most crying of all grievances — the tyranny of judge-made law — continues unredressed, — the correspondent public service unperformed — so long as the torrent of human misery, flowing from it, keeps running on; — be the number of ages during which it will have continued ever so great, never will the use, whatever it be, which the matter of these proposed petitions is capable of being put to, be at an end.

20. To the care of posterity, should the time not be yet ripe, the author will recommend this matchless service with his dying breath.

21. Hapless individual, whoever you may be, whose lot it is to behold your means of subsistence torn from you, and plunged into the gulph called by a cruel mockery a *court of equity*, there to be devoured by the appointed sharks, — in these pages you may at all times see samples — samples ready made — of the only sort of *instrument*, which it is in your power to make application of, in the character of a remedy: — with this in hand, you may go about, and look about, for assistants and coadjutors, in those companions in misery, whom, in such deplorable abundance, you will behold presenting themselves all around.

22. Nor, while for companions in misery you look sideways, forget to look upwards, for the authors — cruel hypocrites, in pretence alleviators — in reality preservers — of all parts of it anxious and industrious preservers, when neither creators nor exacerbators.

23. But (says somebody) is there not one still better course left, which you might have taken, and which is still left open to you to take? From the matter of the original full-length petition and the abridged petition taken together, might not you have drawn up — might not you even now draw up — a new draft, consigning to the flames *both* the existing ones? *Answer:* By *time* and *expense* taken together, intimation is given of two objections, the first of which might of itself be conclusive: considering that, during the time thus occupied in an operation little better than mechanical, all other works, of greater usefulness in this same time, would be at a stand.

24. But another answer still more conclusive, and it is hoped satisfactory, is this. By no means, by any such ulterior and amended abridgment, would the purpose of it be answered. For, while for the purpose of it, a survey were taken of the field, fresh weeds would be seen springing up, and pressing themselves upon the extirpating hand. In this way, after enlarged as well as abridged editions, in any number — each superseding all former ones, — still the demand for another and another would be presenting itself: nor, for the consumption of labour, time, and money, would the demand cease, till the work, of which an *outline*, and nothing more, is here professed to be presented, had been brought to a state regarded as a state of completeness.

25. Suppose it now in that state, the following is the form in which it would present itself to view: of the here-proposed system, the part called the *prayer*, in the very *words*, or as lawyers say, *tenor* of it, occupying the foremost places: but, by the side of it, all along, a delineation of the several correspondent features of alleged inaptitude, ascribed to the existing systems: to the principal *text* would thus be subjoined a sort of *perpetual commentary* thus composed.

26. In conclusion, a word or two as to the *numerical figures*, which, in the abridged petition, stand prefixed to the paragraphs: in the abridged petition only; in the original one not; the demand for that help to reference not having as yet presented itself to view.

27. For all but the two *first* of the above proposed six options, indisputable assuredly is the facility that will be found afforded by this little additament. Witness, and experience of the result of the non-employment of them. By means of these instruments (than which nothing can be more familiar or indispensably useful, — or even, by the constituted authorities themselves, more universally applied to portions of the matter of *law*, — except where the production of uncertainty and mistake is among the objects aimed at) reference is, in the concisest manner possible, made to any assemblage of words whatsoever,

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without danger of mistake: — without them, mistake and uncertainty may, to any amount, be produced.

28. Accordingly, wherever, in relation to a law or a body of laws, to maximize the execution and effect given to it is really an object of desire, — numerical figures, prefixed to the several portions of discourse, are the instruments employed. Witness the practice in every civilized part of the globe; England — lawyer-ridden England — alone excepted.

29. On the other hand, wherever the design entertained is — the giving increase to such uncertainty, with its attendant miseries, — objects in view the benefit of the lawyer class, and those connected with it by any community of sinister interest, — the use of this, together with so many other instruments of certainty, is pertinaciously and inexorably abstained from: imitated thus the fabled barbarity of Mezentius: kept bound up in the closest contact with carcases in an ambiguous state between life and death, is the whole stock of those statutes, which are still designed, as well as destined, to be employed as living ones. Witness the latest of the string of *bills*, framed exactly as if they had for their object, on pretence of diminution, the augmentation and perpetuation of depredation and oppression. "Repealed — such an act (thereupon designated by its long and wordy title,) and such an act (designated in the same conception-confounding manner) and *so much* of such an act — in like manner designated." — So much? How much? Learned sir! Right honourable sir! whichever be your right name — render it possible for us to know *how much*: instead of consigning to complete ruin, by alleged mistake as to the *how much*, on the part of a wretch, who has been half ruined by some petty tyrant, clothed in the authority of a justice of the peace, at whose charge, on the faith of parliament, that compensation has been *sought*, which would not have been promised, but for the foreknowledge that it would never be granted. — "*So much?*" — Once more, *how* much? — Till of late, followed upon the words "*so much*" the words "*as relates to* the subject of . . . . :" whereupon came some sort of designation given of it. Now, even this clue is refused, and the passage evaporates in nonsense.

30. To these figures, — when the question was as to the mode of preparing drafts for receiving signatures, — an objection was made on the ground of *unusualness*. To the quarter from whence the objection came, nothing short of the most respectful attention could be paid. But the use, to which on that occasion it was destined, was no other than that of being applied to an instrument which was then actually in a state for receiving signatures: and to which accordingly, references, for any such purpose as the one then in question, were not intended to be made. Of these instruments of clarification, the use and purpose here in question is — the subjecting to decomposition the supposed too bulky bodies, — that out of them, other bodies in any required number, *polype* like, might be framed. But, in the case here alluded to, no such decomposition was contemplated.

Comes now another use, of these small but effective instruments of precision: call it, for example, the *argumentative*, or argument-assisting use: calling, for distinction's sake, the one first mentioned the *simply indicative*. Of these same little instruments is constituted a support — and that a matchless one — for *close reasoning*.

32. Pitiable, in good truth, will be seen to be the condition of the disingenuous opponent, who, casting an eye on a body of argument which he stands engaged to encounter and attack, beholds it armed with them. Thus distributed into so many articulate parts, — for the clear, correct, and complete designation of each of which, a single word is effectually sufficient, — the discourse, be it what it may, presents to him, in each part of it, a determinate and never-misapprehensible object and standard of reference. "Here, sir, is proposition the first. What say you to it? has it your assent? has it your dissent? If your dissent, for what reason or reasons?" Unapprised of the existence of these defences, — he comes (suppose) with his quiver full of *devices* borrowed from the *Book of Fallacies*. See, then, the condition in which he finds himself. Instead of doing as he had flattered himself with doing, — instead of shooting fallacies into the middle of the discourse at random, — or enveloping the whole expanse of it, as it were, in a net, — he feels himself pinned down, under the pressure of a most distressing alternative. Taking in hand the chain of discourse, — either he must grapple with the links which it is thus composed of, one after another, — or remain motionless: — remain motionless; and thus, by a token more unequivocal and demonstrative than it is in the power of words to be, acknowledge the object of his hostility to be unassailable.

Nothing can he say — (for such is the supposition, and this is a supposition which may continually be seen verified) — nothing can he say, but what is to be found in this or that chapter, section, and article of the *Book of Fallacies*: some article, in and by which, before he ever took this device of his in hand, it may be seen ready confuted. Looking at the mark, — nothing can he find to hit it with, but some witticism — some well-worn piece of nothingness — some *vague generality* — which, — like a cloud, — dark or more or less brilliant, — hanging in the air, — is seen to have no substance — nothing that can be brought to bear upon the object of his warfare.

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33. "Well, sir," — says now to him the master of fair and close reasoning: — "here, sir, is the proposition: what say you to it?" — What! nothing? a man — for ingenuity and promptitude so highly distinguished, kept mute by prudence, because unable to find anything which a man could utter without shame? — What! still silent? Well, then: the demonstration is complete: the proposition uncontrovertible. Yes, altogether uncontrovertible; since you, sir, even you, can find nothing to object to it.

34. Think now, once more, of the condition of the disingenuous and self-condemned would-be assailant, — when, by every fresh proposition, he beholds a fresh triumph over him thus secured.

☞ After writing what is above, came the conception and the hope, that an additional optional petition might have its use: and that, — by the same observations, by which *explanation* and *justification* have been given to the two first, — the like service might in a sufficient degree be rendered to this third: by the title of the *More Abridged Petition*, it is accordingly subjoined.

PETITION FOR JUSTICE.

To the Honourable the House of Commons in Parliament assembled.

JUSTICE! justice! accessible justice! Justice, not for the few alone, but for all! No longer nominal, but at length real justice! In these few words stands expressed the sum and substance of the humble petition, which we, the undersigned, in behalf of ourselves and all other his Majesty's long-suffering subjects, now at length have become emboldened to address to the Honourable House.

At present, to all men, justice, or what goes by that name, is either denied or sold; denied to the immense many — sold to the favoured few; nor to these, but at an extensively ruinous price. Such is the *grievance*.

As to the cause, it is undeniable. Power to judges to pay themselves — to pay themselves what they please, so it be at the expense of suitors.

The denial and the sale follow of necessity. Be the pay in each instance but a farthing, to all that cannot pay the farthing, justice is denied: to all those who can and do pay the farthing, sold.

And the persons on whom alone this burthen is imposed, who are they? Who, but the very persons, who alone, were the exemption possible, should be exempted — altogether exempted from it. Distinguished from all other persons are suitors, by the *vexation* which, as such, they endure. The security, whatever it be, which, by this vexation, these so dearly pay for, all others enjoy without it; and on each man, the greater the vexation in other shapes, the higher (it will be seen) is the tax; for the longer, and thence the more vexatious, the suit, the more numerous are the occasions on which payment of this species of tax comes to be exacted.

What if this faculty of setting, in the same way, their own price upon their own service, were given — (and why might it not as well be given?) — to functionaries in other departments? — say, for example, the military. The business of military functionaries is to give security against external, of judiciary functionaries against internal adversaries. What if to the army power were given to exact whatever contributions it pleased, so it were from those alone who had been sufferers from hostile inroads? By those military functionaries this power has not ever been received; by judiciary functionaries it not only has been received, but to this day, continues to be exercised.

The tax called *ship-money* found a Hampden to oppose it; to oppose it at the expense, first of his money, then of his life. Neither in its principle was that same *ship-money* so absurd, nor in its worst natural consequences would it have been, by a vast amount, so mischievous, as this *justice-money*, for so, with not less propriety, might it be called. *Ship-money* produced its Hampden: the Hampden for *justice-money* is yet to seek.

Taxes, imposed on suitors at the instance of ministers were bad enough; but they are not, by a great deal, so bad as those imposed by judges. Ministers cannot, without the sanction of Parliament, give increase to taxes imposed at their instance. Judges can, and do give increase, at pleasure, to taxes imposed for their own emolument, by themselves.

Out of our torments they extract their own comfort; and in the way in which they proceed, for each particle of comfort extracted for themselves, they, of necessity, heap on unmeasurable load of torment upon us. By every fee imposed, men, in countless multitudes, are, for want of money to commence to carry on a suit, deprived of rights to any amount, and left to suffer, without redress, wrongs to any amount; others made to suffer at the hands of judges, for want of the money necessary to enable them to defend themselves against unjust suits.

In all other cases, the presumption is, that, if left to himself, man will, upon each occasion, sacrifice to his own, every other interest; and upon this supposition are all laws grounded: what is there in irresistible power,

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wrapt in impunity, that should make it — what is there in an English judge that should make him — an exception to this rule?

Such being the grievance, and such the cause of it, now as to the remedy. *The cause* we said, for shortness; *the causes*, we should have said, for there is a chain of them; nor till the whole chain has been brought to view can any tolerably adequate conception be entertained of the sole effectual remedy — the natural substituted to the existing technical system of procedure. Cause of the oppositeness of the system to the ends of justice, the sinister interest on the part of the judges, with whom it originated. Cause of this sinister interest, the mode of their remuneration: instead of salary paid by government, fees exacted from suitors. Cause of this mode of remuneration, want of settled revenue in a pecuniary shape: for military and other purposes, personal service rendered to government, being paid for, not in money, but in land. Cause of this mode of payment, rude state of society in these early times.

But for the Norman conquest, no such sinister interest, in conjunction with the power of giving effect to it, would have had place. At the time of that disastrous revolution, the local field of judicature was found divided into small districts, each with its appropriate judicatory; still remaining, with small parcels, or faint shades of the power, are the denominations of those judicatories, county courts, for example, hundred courts, courts leet, courts baron. In each such district, in the powers of judicature, sharers (in form and extent not exactly known) the whole body of the freeholders. Form of procedure, the natural, the domestic; natural — that is to say, clear of all those forms by which the existing system — product of sinister *art*, and thence so appositely termed the *technical* — stands distinguished from it: forms, all of them subservient, of course, to the ends of judicature; all of them opposite, as will be seen, to the ends of justice.

Let not any such charge as that of unwarrantable presumption attach on the views, which we, your petitioners, venture thus respectfully to submit to the Honourable House. Be the occasion what it may, — when by numerous and promiscuous multitudes, expression is given to the same opinions, as well as to the same wishes, unavoidably different are the sources from which those opinions and those wishes are derived: in some reflection made by themselves; in others, confidence reposed in associates. Among those in whom, on the present occasion, the necessary confidence is reposed, are those, the whole adult part of whose lives the study of the subject has found devoted to it.

History and description will now proceed hand-in-hand. As it was in the beginning, so is it now. How things are, will be seen by its being seen how they came to be so. To the arrangements, by which the existing system has been rendered thus adverse to the ends of justice, will be given the denomination of *devices:* devices, having for their purposes the above-mentioned actual ends of judicature: and under the head of each device, in such order as circumstances may in each instance appear to require, the attention of the Honourable House is solicited for the considerations following: —

1. Mischievousness of the device to the public in respect of the adverseness of the arrangement to the ends of justice.

2. Subserviency of the device to the purposes of the authors — that is to say, the judges, and others, partakers with them in the sinister interests.

3. Impossibility that this adverseness and this subserviency should not have been seen by the authors.

4. Impossibility, after this exposure, that that same adverseness should not now be seen by those to whom the device is a source of profit.

5. Incidentally, originally-established apt arrangements, superseded and excluded by the device.

The ends of justice, we must unavoidably *remind* (we will not say *inform*) the Honourable House — the ends of justice are, — 1. The giving execution and effect to the rule of action; this the main end; 2. The doing so with the least expense, delay, and vexation possible; the collateral end.

In the main end require to be distinguished two branches: 1. Exclusion of *misdecision:* 2. Exclusion of *non-decision.* Non-decision is either from *non-demand* or *after demand.* The first case is that of simple denial of justice: the other case is that of denial of justice, aggravated by treachery and depredation to the amount of the expense: of the collateral end, the three branches, delay, expense, and vexation, have been already mentioned.

To these same ends of justice, correspondent and opposite will be seen to be the ends — the originally and still pursued actual ends — of judicature: from past misdecision, comes succeeding uncertainty; from the uncertainty, litigation: from the litigation, under the existing fee-gathering system, judge's profit: from the expense, in the more immediate way, that same sinister profit: from the delay, increase to expense and thence to that same profit: from the expense and the delay vexation: this not indeed the purposed, but the unheeded and thence recklessly increased result. Of the non-decision and the delay, ease at the expense of duty will moreover, in vast proportion, be seen to be the intended, and but too successfully cultivated, fruit.

Manner, in which this mode of payment

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took place, this. Originally, king officiated not only as commander-in-chief, but as judge. From this reality came the still existing fiction, which places him on his own bench in Westminster Hall, present at every cause.

At the early period in question, in the instruments still extant under the name of *writs*, king addresses himself to judge, and says — "These people are troublesome to me with their noise: see what is the matter with them and quiet them — *ne amplius clamorum audiamus.*"

Thus far explicitly and in words. Implication added a postscript: "This will be some trouble to you; but the labourer is worthy of his hire."

Nothing better could judge have wished for. All mankind to whom, and all by whom injury had been done or supposed to be done, were thus placed at his mercy: upon the use of his power, he had but to put what price he pleased. To every one who regarded himself as injured, his assistance was indispensable: and proportioned to plaintiff's assurance of getting back from defendant the price of such assistance, would be his (the plaintiff's) readiness to part with it. To the defendant, permission to defend himself was not less indispensable. As to pay, all the judge had to choose was between high fees and low fees. High fees left at any rate most ease; but the higher they were, the less numerous: the lower, the more numerous the hands by which they could be paid. Thus it was that, by kings, what was called justice, was administered at next to no expense to themselves, the only person, by whom the burthen was borne, being the already afflicted. Bad enough this; but in France it was still worse. Independently of the taxes, imposed under that name directly, on the proceedings, profit by sale of the power of exacting the judge's fees, was made a source of revenue: and hence, instead of four benches with one judge, or at most four or five judges on a bench, arose all over the country large assembly rooms full of judges, under the name of *parliaments*.

Of the *Devices* to which we shall now intreat the attention of the Honourable House, the following are the results: —

I. Parties excluded from judges' presence.
II. Language rendered unintelligible.
III. Written instruments, where worse than useless, necessitated.
IV. Mendacity licensed, rewarded, necessitated, and by judge himself practised.
V. Oaths, for the establishment of the mendacity, necessitated.
VI. Delay in groundless and boundless lengths, established.
VII. Precipitation necessitated.
VIII. Blind fixation of times for judicial operations.
IX. Mechanical, substituted to mental judicature.
X. Mischievous transference and bandying of suits.
XI. Decision on grounds avowedly foreign to the merits.
XII. Juries subdued and subjugated.
XIII. Jurisdiction, where it should be entire, split and spliced.
XIV. Result of the fissure — groundless arrests for debt.

Explanations (we are sensible) are requisite: explanations follow.

I. *Device the First — Parties excluded from judges' presence.* — Demandant not admitted to state his demand; nor defendant his defence: admitted then only, when and because they cannot be shut out: admitted, just as strangers are: admitted without the power of acting for themselves.

In this device may be seen the *hinge*, on which all the others turn: in every other, an instrument for giving either existence or effect, or continuance to this indispensable one.

Only by indirect means could an arrangement so glaringly adverse to the ends of justice have been established: these means (it will be seen,) were the *unintelligible* language and the *written pleadings*.

At the very outset of the business, the door shut against the best evidence: evidence in the best form, from the best sources. No light let in, but through a combination of mediums, by which some rays would be absorbed, others refracted and distorted.

No information let in but through the hands of middle men, whose interest it is that redress should be as expensive, and for the sake of their share in the expense, as tardy as possible.

For what purpose but the production of deception by exclusion put upon truth, and admission given to falsehood, could any such arrangement have been so much as imagined?

For terminating a dispute in a family, was ever father mad enough to betake himself to any such course? Better ground for a commission of lunacy would not be desired; no, not by any one of the judges, by whom the profit from this device is so largely reaped.

Upon each occasion, the father's wish is to come at the truth: to come at it, whatever be the purpose: giving right, giving reward, administering compensation or administering punishment. The father's wish is to come at the truth: and the judge's wish — what else ought it to be? For coming at the truth, the means the father employs are the promptest as well as surest in his power: what less effectual means should be those employed by the judge?

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Forget not here to observe how necessary the thus inhibited interview is to the ends of justice — how necessary accordingly the prevention of it to the actual ends of judicature.

Where the parties are at once allowed and obliged, each, at the earliest point of time, to appear in the presence of the judge, and eventually of each other; where this is the case (and in small-debt courts it is the case,) the demandant of course brings to view every fact and every evidence that in his view makes for his interest: and the defendant, on his first appearance, does the like. If the demand has been admitted, demandant applies himself to the extraction of admission from defendant, defendant from demandant. Original demands — cross demands — demands on the one side — demands on the other side — relevant facts on one side — relevant facts on the other side — evidence on the one side — evidence on the other side — all these grounds for decision are thus at the earliest point of time brought to the view of the judge; and, by anticipation, a picture of whatsoever, if anything, remains of the suit, pourtrayed in its genuine, most unadulterated, and most instructive colours.

Of the goodness or badness of each suitor's cause, of the correctness or incorrectness of his statements, all such evidence is presented to the judge's view, as it is in the nature of *oral* discourse, gesture, and deportment, to afford.

As to *mendacity*, say, in the language of reproach, *lying*, licence for it could no more be granted to a party, in this supposed state of things, than to a witness it is in the existing state of things.

Continue the supposition. For the truth of whatever is said, every man by whom it is said is responsible. From the very first, being in the presence, he is in the power of the judge. Moreover, for continuing such his responsibility as long as the suit renders it needful, a mode of communication with him may be settled in such sort, that, for the purpose of subsequent operations, every missive, addressed to him in that mode, may, unless the contrary be proved, be acted upon as if duly received.

In the judicatory of a justice of peace, acting singly, and in a small-debt court, conducted in this way, many and many a suit is ended almost as soon as begun: many a suit, which, in a common-law court, would have absorbed pounds by hundreds, and time by years; and, after that, or without that, in an *equity court*, pounds by thousands, and time by tens of years; as often as, upon the demandant's own showing, the demand is groundless, to him, who, under the present system, would be defendant, all the expense, all the vexation, attached to that calamitous situation, would be saved.

To go back to the primeval period, which gave rise to this device, where, in a countless swarm, fee-fed assistants and they alone had to do the business with their partner in trade, the fee-fed judge, the reverse of this took place; and continues to have place of course. Everything was and is kept back as long as possible: operation was and is made to follow operation — instrument, instrument — that each operation and each instrument may have its fees. On the one hand, *notices*, rendered as expensive as possible, are sent for the purpose of their not being received: on the other hand, of notices that have been received, the receipt is left unacknowledged or even denied, and in either case assumed not to have place.

True it is, states of things there are, in which, either at the outset, or at this or that time thereafter, neither in the instance of both parties, nor even of either party, can the appearance in question have place. For a time longer or shorter, by distance, or by infirmity, bodily or mental, a party may stand debarred altogether from making his appearance before the judge; or though appearing, the aid of an apt assistant may be necessary to him. When the party interested is a body corporate, or other numerous class, composed of individuals assignable or unassignable, of agents, and other trustees of all sorts, the attendance may, at the outset or at some later period, be necessary, with or without that of their respective parties.

But, whatever be the best course, the impracticability of it, in one instance, is it a reason for not pursuing it, as far as practicable, in any other?

Under the system, in its present state, certain sorts of suits there are, to which the exclusion does not apply itself. What are they? They are suits in which, if thus far justice were not admitted, the exclusionists might themselves be sufferers: suits for murder, theft, robbery, housebreaking, and so forth. Judges, whether they have bowels or no, have bodies: judges have houses and goods. A year or two at common-law, ten or twenty years in equity, would be too long to wait, before the criminal could be apprehended. But, that purpose accomplished, off flies justice: six months or twelve months, as it may happen, the accused lies in jail, if guilty; just so long does he, if innocent. But of this under the head of *Delays*.

But, says somebody, why say *excluded?* When, in any one of these courts, a suitor makes his appearance, is the door of the court shut against him? Did no instance ever happen, of a suitor standing up in court, and addressing himself to the judge? Oh yes: once in a term or so; scarce oftener. And why not oftener? Even because, as every man sees, nothing better than vexation is to be got by it. And, if at any, at what period can this

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be? Not at the outset: not till the suit has run out an indefinite part of its destined length: the judge being in by far the greatest number of individual suits, from first to last, invisible: nor yet an invisible agent, but an invisible *non-agent:* mechanical, as will be explained; mechanical from the outset being the mode, to a truly admirable length, substituted to mental judicature. But suppose the unhappy outcast in court, proceedings, by the devices that will now immediately be explained — proceedings, and even language, have been rendered, he finds, unintelligible to him. Even if he has counsel, of whom, besides one for use, he must have at least one, and may be made to have half-a-dozen for show; if, though it be but one of them has opened his mouth, the mouth of the unhappy client is not indirectly as above, but directly, and with the most shameless effrontery, inexorably closed. The one in whom all his confidence is reposed, may, by treachery or negligence, or craving for greater gain elsewhere, have forfeited it. Three hundred guineas have been given with a brief, the fee left unearned, and restitution refused. If, in such circumstances, a counsel though it be one who, not expecting to be needed is unprepared, has but opened his lips; *no* (says the judge,) counsel has spoken for you, you shall not speak for yourself. A plaintiff, had he ever such full licence to speak, could he compel the appearance of a defendant? Not he, indeed. If both were in court together, by accident, could either compel answer to a question put to the other? As little.

II. *Device the Second — Language rendered unintelligible.* — It was by this device that, in the first instance, the exclusion was effected.

To Saxon judicature succeeded that of Norman conquerors: to Saxon liberalism, Norman absolutism. In Saxon times reigned, in adequate number, local judicatories: not only county-shires, but, so to speak, still lesser judge-shires: hundred courts, courts leet, courts baron, and others.

Then and there, people or lawyers made no difference; language was the same. From the presence of the judge, in any one of these small and adequately numerous tribunals, directly or indirectly, was suitor ever excluded? No more than in a private family, contending children from the presence of their fathers.

Under the Norman kings grew up Norman French speaking lawyers. Whether in the metropolis or elsewhere, along with his horses and their grooms, one train of these domestics was always in attendance about the person of the king. To this train was given the cognizance of all such suits as, from such varied distances, so various and some of them so long, could be made to come to it.

Quartering himself upon vassal after vassal, the king was perpetually on the move: in his train moved a judge or judges.

To this train, whatever part of the country he had to come from, every man, who had anything to complain of, had to add himself. To the place, wherever it was, that the train happened to be at, the defendant had to be dragged. When there, these same suitors there found a judge or judges, who, speaking a different language, could not, or would not, understand what they said.

The language of the Normandy-bred lawyers was a sort of French. The language of the country from whence they came, these lawyers spoke: the language of the country into which they were come, they disdained to speak. The rules, such as they were, by which the procedure of these foreign despots, — in so far as memory served, and self-regarding interest permitted, — could be guided, would of course be such as their own language gave expression to: rules which, as well as the rest of the language, were, to the vast majority of the suitors, unintelligible: meaning by suitors, on this occasion, not only those who were actually so, but those who, but for this obstacle, would have been, but could not be so. *Justiciables* they are called in French. In British India, this state of things may, with a particular degree of facility, be conceivable.

Here then by a plaintiff, if he would have his demand attended to, by a defendant if he could be admitted to contest it — here were two sorts and sets of helpmates to be hired: interpreters to convey what passed between parties and their advocates, and between witnesses and judge; and advocates to plead the cause on both sides.

Between advocates and judges the connexion was most intimate. Like robbers acting together in gangs and without licence, — these licensed, irresistible, and unpunishable depredators, linked together by one common interest, acted as *brothers*, and styled one another by that name.

Thus circumstanced, they had but to take measure of the disposable property of the suitors, and divide it among one another, as they could agree.

In and by this confederacy, in a language, intelligible seldom to both parties, most commonly to neither; or, what was worse, to one alone, was the matter talked over and settled. As to the truth of what was said, how much was true, how much was false, was not worth thinking about; means of ascertaining it there were none. Parties while exhausting themselves in fees, either looked on and stared, or, seeing that by attendance nothing was to be got but vexation, staid away. At an early period, minutes of these conversations came to be taken by authority, and continued so to be till the end of the reign of Henry the VIII.,

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anno 1546, from which time, under the auspices of chance, they have been continued down to the present. Under the name of the *Year-books*, from the commencement of the reign of Edward I. anno 1272, they are, in greater or less proportion, extant in print, having been printed anno 1678.

By this one all-powerful judicatory (*metropolitan* it might have been styled, had the place of it been fixed,) by this one great French-speaking judicatory, the little local English-speaking judicatories were swallowed up. Remains to be shown how this was managed.

A suit, from which, if given *for* him, a man saw he should reap no benefit, would not be commenced by him. When, in a local judicatory, in which the plaintiff's demand being so clearly just, the defendant would have been sure to lose, a suit was depending, the judges on each occasion, at the instance of the defendant, sent to the howsoever distant judicatory an order to proceed no further, and to the defendant an order to come, and, along with the plaintiff, add himself to the train, as above. This having been made the practice, and been extensively felt and universally seen to be so; thus, all over the kingdom, was an end put to the business of all these English-speaking and justice-administering judicatories.

If a man, who was rich enough, beheld within the jurisdiction of one of those judicatories, another whom, by enmity or any other cause, he was disposed to ruin, all he had to do was to commence a suit, either in the great travelling judicatory, or in the first instance in the little first judicatory, and thence call it up into this all-devouring one.

Appeal, on such occasions, does good service; this practice (*evocation*, in French, it is called) was, anybody may see to how great a degree, an improvement upon it.

If, from all these judgeshires, howsoever denominated and empowered—county courts, hundred courts, courts leet and courts baron, —appeals had been receivable, this would have done much, but this would not have done everything. Some indeed would have passed through the strainer, and yielded fees. But by far the greater part would have stuck by the way, and have thus been useless.—Upon the vulgar modes of appeal, evocation was no small improvement. On an appeal, misdecision on the part of the inferior authority required to be proved. Presumption is shorter than proof. By an evocation, this presumption was regularly made, and being made, acted upon.

III. *Device the Third—Written Instruments, where worse than useless, necessitated.*

So far from being worse than useless, indispensable to perfect judicature is the art of writing, in so far as properly applied. Properly applied it is to three things: instrument of demand under the appropriate heads; instrument of defence under appropriate heads; and on both sides *evidence*. To no one of these three heads belong the so much worse than useless written instruments, styled *pleadings*. Behold, in the first place, the use and demand there was for instruments of this sort; meaning always with reference to the sinister interests of Judge and Co., then afterwards their particular nature.

By the unintelligibility given to the language, absolutely considered, not inconsiderable was the profit gained; comparatively speaking, relation had to what could be done, and was done accordingly, very little.

Of the French language, the usefulness to Judge and Co. was wearing out. Not to speak of amicable and commercial intercourse, *war* was, ever and anon, sending Englishmen into France, lower and higher orders together, by tens of thousands at a time. Under Edward III. a hundred thousand at one time made that fruitless visit to the walls of Paris.

While the use of the French language was thus spreading itself, so was the art of writing, and with it the use of the Latin language; among the priesthood it was common; and amongst the earliest lawyers were priests.

Now was come the time for pressing preeminently useful art, and not altogether useless erudition, into the service of discourse. Written pleadings were added to oral ones; added, not substituted; prefixt, being interposed between the delivery of the original scraps of parchment, and the debate in court. French the spoken matter, preceded by Latin, and that written; thus was darkness doubled, and difficulty trebled. Of this darkness the Latin part continued, unimpaired by any the faintest ray of light, till towards the middle of the last century. By statute of the 4th of George II. anno 1731, the darkness invisible transfigured into the existing darkness visible.

Contemplating it, the all but failure, Blackstone cannot hold his exultation.

Notice to dishonest men, in general, was then given by the fee-fed judges. Is there any man whose property, or any part of it, you would like to have?—any man you would like to ruin? If you can drop pence with them into my *till*, till they are tired, do what you like, and if they call upon me to help them, stand fast; they shall have their labour for their pains. Or, if you cannot come at them, I will do the thing for you. This was neither cried, nor sung, nor said. But when acts speak, words are needless. Such was the language then — such is the language now.

As to the uses — the advantage obtained through mendacity will be brought to view under the next head: even supposing the line

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of truth ever so rigidly adhered to, still the advantage could not fail to be considerable. To no inconsiderable extent, incapacity, especially in that rude state of society, would do the work of sinister art. Only by the capacity of paying on the one part for it, would any bounds be set to the extent to which, without aiming at excess, a rambling story might be spun out on either part.

Even from the first, to the purpose of giving the proposed defendant to understand he was expected to make his appearance, on a certain day, at a certain place, on pain that should follow, was applied (it would seem) a scrap of parchment (paper as yet unknown,) with a scrap of writing written upon it. Of the writing, *Latin* was the language; by anything so vulgar as the conquered language, conquerors disdained to sully hands, lips, or ears. It was between this *writ* (so it came afterwards to be called)—between this *writ* and the *viva voce* discussion that the pleadings were interposed.

On the occasion of each suit, four things there are, to distinguish which clearly from each other was, and still continues to be found a task of no inconsiderable difficulty: these are — 1. The service demanded of the judge at the charge of the proposed defendants, say in one word *the demand;* 2. The portion of law on which the demand was grounded; 3. The individual matter of fact, which, it is alleged, has brought the individual case within the sort of case, for which the provision has been made by the law; 4. The evidence, or say the proof, by which the existence of these same facts was required and expected to be made manifest: not to speak of the *law*, where there not being any really existing portion of law bearing on the sort of case, the existence of a portion of law adapted to the plaintiff's purpose must of necessity be assumed: assumed — that is to say, created by imagination, in a form, adjusted in some way or other to the demand. Correspondent was the course necessary to be taken on the defendant's side.

As to the *demand*, next to nothing was the information given in relation to it by the *writ*. Remained therefore to be given by the pleadings the particular nature of the service, as above demanded, together with a statement of the *facts*, on which the demand was grounded, with which was chemically combined, a dram of the portion of common, alias judge-made law, which this same demand took for its ground.

Signal was the service rendered to the inventors by this decree:—1. Spoken words could not be sold at so much a dozen: the written words could be and were; so much for the profit account: 2. Of the word of mouth alterations, not a syllable could be uttered, which the judge did not sit condemned to hear: all labour, without profit; different the case when this preliminary written alteration came to be added: once commenced, then on it went of itself, like a pump set a going by a steam-engine: the judge receiving his share of the profit on it, neither his ears nor his eyes being any part of the time troubled with it: so much for the *ear* account. But of this further under the head of Mechanical *vice* Mental Judicature.

Yet another use: The additional and so unhappily permanent, served thus as the subject-matter and groundwork for the subsequent and evanescent mass of profit yielding surplusage.

By the plaintiff, his story had to be told to a sort of agent called, in process of time, as *attorney*, a word which meant a *substitute:* from this statement, the attorney had to draw up a *case:* from this *case* an advocate, styled a *sergeant contour*, afterwards simply sergeant (originally styled *apprentices*—barristers were not hatched,) had to draw up the pleadings, commencing with that styled, as above, the *declaration:* attached to each of these learned persons was his clerk: masters and clerks, by each one of them was received his fees.

Father of a family! when you have a dispute to settle between two of your children, do you ever begin by driving them from your presence?—do you send them to attorney, special pleader, sergeant, or barrister? Think you that by any such assistance, any better chance would be afforded you for coming at the truth, than by hearing what the parties had to say for themselves?

Page upon page, and process upon process, each process with fees upon fees, — all these for the production of no other effect than what is every day produced all over the country by a line or two in the shape of a summons or a warrant from a justice of the peace; a hundred-horse steam-engine for driving a cork out of a bottle.

"Tell Thomas to come here," or "bring Thomas here:" this is what a father, when his wish is to see his son Thomas, says to his son John. Father of a family! if your power of endurance is equal to the task, wade through this mass of predatory trash, and imagine, if you can, the state your family would be in, if by no one of your children you could ever get anything done, without the utterance of it. Well then: exactly as necessary — exactly as contributive is it to the giving execution and effect to an ordinance of the king in parliament, as it would be to the giving execution and effect to an order addressed by you, on the most ordinary occasion, to any child of your's.

The judge was, in a word, a shopkeeper. A spurious article, stampt with the name of *justice*, the commodity he dealt in. By hearing the applicant — the would-be plaintiff in

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person, nothing was to be got: by serving the scrap of parchment, a fee was to be got: one fee, and that one, like the queen bee, mother of a swarm of others.

To conclude this same subject of written pleadings, and the use of it to lawyercraft. Well might Blackstone thus triumph as above: well might he felicitate himself and his partners in the firm. To his analysis is subjoined an *Appendix*, in x. numbers, the vii. last of which are precedents of contract or procedure, chiefly procedure, still in use. Numbers vii. divided into sections 22: and, in each of several of the sections, distinct instruments more than one. An exhibition more eminently and inexcusably disgraceful to the head or heart of man, scarcely would it be in the power of reward to bring into existence. Not one of these instances is there, in which, in an honest, intelligible, and straightforward way, the purpose might not with facility be accomplished: in not one of them, in any such way, is the purpose actually aimed at. In every one of them the matter of it is a jargon of the vilest kind, composed of a mixture of lies and absurdity in the grossest forms. In maleficence, much worse than simple nonsense. By nonsense, no conception of anything being presented by it to anybody, no deception would have been produced: by this matter, to every *eye* but that of a lawyer, a false conception is presented; and, in his *mind*, if he be not sufficiently upon his guard against it, will be produced.

Such was the use derived from this invention in its original and most simple state: remain to be brought to view the increments it received, earlier or later, from the other sources above mentioned: from the suborned mendacity — from the established delays, from the groundless nullifications, on grounds avowedly foreign to the merits: and as in process of time, jurisdiction, as will be seen, came to be split, then came the ulterior improvements, introduced by equity, and spirituality: equity and spirituality — those two favourite handmaids of the dæmon of chicane.

IV. *Device the Fourth—Mendacity: licensed, rewarded, necessitated, and by Judge himself practised.*

Of this contrivance, the root will be seen in a distinction taken between *pleadings* and *evidence*. To mendacity in evidence, no allowance is given: to mendacity in pleadings, full allowance. Why not to mendacity in evidence? Because if, to this last stage in the suit, the allowance had been extended, not so much as a shadow of justice would have been kept on foot: society could not have been kept together.

Now, for this same distinction, what ground is there in the nature of the case? Not any. "Thomas Nokes took my horse on such a day" (naming it,) — says I, John Stiles (the plaintiff,) to the judge, Make him give me back the horse, or give me its value. In this may be seen the *instrument stated:* first link in the chain of written pleadings — I saw the defendant take the horse, says Matthew Martyr, afterwards, at the trial. This is called *proof* on *evidence*. Matthew Martyr, if what he thus says is false, is punishable. But if John Stiles, though conscious that the defendant never took the horse, declare that he did take it, and this for the purpose of obtaining the value at his charge, why should he be unpunishable? Rational cause for the distinction, none.

On the other hand, for the purpose of depredation under the mask of justice, — the reason — the use — the ingenuity of it is admirable. By taking off the punishment from this stage of the suit, the door was thrown open to every dishonest man who, being rich enough, felt disposed to hire the judge, to enable him, then as now, by means of the costs of suit to accomplish his dishonest purpose. By suffering the punishment to be capable of attaching at the last stage of the suit, no advantage was lost; before the suit had run this length, the defendant's ruin may have been accomplished.

Moreover, if by this or that man in the character of a witness, wilful falsehood comes to have been committed, so much the better: for here, if the purse of the party injured by falsehood not being yet drained, passion has got the better of prudence, here comes another suit: the suit by which the infliction of the punishment is demanded.

The nature of the destruction thus established, behold now the several applications made of it: — the *licence*, or say permission, the *remuneration*, or allowance, and the *compulsion*, all together. By a pre-established harmony, evidenced by usage, the judge stands determined, that, if the defendant, having received, or been supposed to have received, this same *first* link in the chain of *pleadings*, does not, on his part, add to it a *second*, he the judge, will cause seizure and sale to be made of the defendant's goods; and the proceeds, to the amount in question, delivered to the plaintiff. What the dishonest plaintiff knew from the first was—that for no *lie*, by which he gave, as above, commencement to the suit, would he be punishable: here, then, was the *allowance*, or say *licence:* what he also knew was — that, if the first tissue of lies failed of being, in appointed time, answered by the defendant in correspondently mendacious prescribed form, — he, the dishonest plaintiff, thus rendered so by the judge, by the invitation virtually given to him and everybody by this his hired instrument and accomplice,—would receive the contemplated

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reward for his dishonesty: here, then, comes the remuneration and the compulsion: the remuneration thus given by the judge to the dishonest plaintiff: the compulsion thus applied by the judge to the defendant; and so on through any number of *links* in the chain of pleadings.

Had justice been the end aimed at, would this have been the course? No: but a very different one. No sale of dear-bought strips of parchment, befouled by judge's lies. From the very first, no suit commenced but by an interview between the suitor and the judge. No ear would the judge have lent to any person in the character of plaintiff, but on condition, that, in case of mendacity, he should be subjected to punishment, including in case of damage to an individual, burthen of compensation. Thus, then, vanishes the distinction between *pleadings* and *evidence;* and of the dishonest suits that then were, and now are, born and triumph, a vast proportion would have been killed in embryo. Of whatever, on this occasion, were said by the applicant, not a syllable that would not be received and set down as *evidence:* received, exactly as if from a stranger to the suit; and so in the case of the defendant. Wherever it were worth while, in the thus written evidence, the now written, and above-described unpunishably mendacious pleadings, would have their so uncontrovertibly beneficial substitute.

Now for Mendacity practised. — By mendacity is understood the quality exemplified by any discourses by which wilful falsehood is uttered: habit of mendacity, the habit of uttering such discourse.

Uttered by men at large, wilful falsehood is termed wilful falsehood: uttered by a judge as such, it is termed fiction: understand *judicial fiction.*

Poetical fiction is one thing: judicial fiction, another. Poetical fiction has for its purpose delectation: producing, in an appropriate shape, pleasure: the purpose here a good one, or no other is so. To a bad purpose it is indeed capable of being applied, as discourse in every shape is. But in its general nature, when given for what it is, it is innoxious, and in proportion to the pleasure it affords, beneficent: no deception does it produce, or aim at producing. So much for poetical fiction, now for judicial.

In every instance, it had and has for its purpose, pillage: object, the gaining power; means, deception. It is a portion of wilful falsehood, uttered by a judge, for the purpose of producing deception; and, by that deception, acquiescence or exercise given by him to power not belonging to him by law.

If, by a lie, be understood a wilful falsehood, uttered for an evil purpose, to what species of discourse could it be applied with more indisputable propriety, than to the discourse of a judge, uttered for an evil purpose?

How much to be regretted, that for the designation of the sweet and innocent on the one hand, the caustic and poisonous on the other, the same appellation should be continually in use; it is as if the two substances, sugar and arsenic, were neither of them known by any other name than *sugar!* But the abuse made of this recommendatory word is itself a *device:* an introductory one, stuck upon the principal one.

So much for the delusion; now for the criminality.

Obtaining money by false pretences is a crime: a crime which, except where licensed by public functionaries, or uttered by them, to and for the benefit of one another, is punished with infamous punishment. Power, in so far as obtained by fiction, is power obtained by some false pretence: and what judicial fiction, that was ever uttered, was uttered for any other purpose? What judicial fiction, by which its purpose has been answered, has failed of being productive of this effect?

If obtaining money by false pretences is an immoral practice, can obtaining power by false pretences be anything less so? If silver and gold are to be had the one for the other, so can power and money; if then either has value, has not the other likewise?

If obtaining, or endeavouring to obtain money by false pretences is an act presenting a well-grounded demand for legal punishment, so in its origin, at any rate, was not the act of obtaining, or endeavouring to obtain, by those same means, power? power, whether in its own shape, or in this, or that other shape?

As to the period — the time at which this device had its commencement in practice can scarcely have been so early as the original period so often mentioned: lies are the instruments rather of weakness, than of strength: they who had all power in their hands, had little need of lies for the obtaining of it.

On every occasion, on which any one of these lies was for the first time uttered and applied to use, persons of two or three distinguishable classes may be seen, to whom, in different shapes, wrong was thus done: the functionary or functionaries, whose power was, by and in proportion to the power thus gained, invaded and diminished: and the people at large, in so far as they became sufferers by the use made of it: which is what, in almost every instance, not to say in every instance, upon examination, they would be seen to be.

In the present instance, functionaries, or say authorities, of two classes are discernible:

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The authority, from which the power was thus filched, was either that of the sovereign, their common superordinate — or the co-ordinate authority, viz. that of some judge or judges, co-ordinate with that of the stealers. In a certain way, by the deception thus put upon him, the sovereign was a party wronged, in so far as power was taken from any judge to whom it had by him been given. But this was a wrong little if at all felt: the only wrong felt certainly and in any considerable degree, was that done to another judge or set of judges.

Say *stealing*, or what is equivalent, as being shorter than to say obtaining under false pretences. In each instance, if deception, and by means of it power-stealing, was not the object of the lie, object it had none; it was an effect without a cause.

By a man in a high situation, a lie told for the purpose of getting what he had already, or could get without difficulty without a lie — such conduct is not in human nature.

As to sufferings, nominal only, as above observed, were they on the part of the supreme and omnipotent functionary; here, supposing them real, no sooner had they been felt, than they would have been made to cease, and no memorial of them would have reached us.

Not so in the case of learned brethren: stealing power from them, was stealing fees. Accordingly, when, towards the close of the seventeenth century, a theft in this shape had been committed, war broke out in Westminster-hall, and fictions, money-snatching lies, were the weapons. But of this under the head of *Jurisdiction-splitting*.

There, all the while on his throne sat the king: that king, Charles II. But, to a Charles II., not to speak of a king in the abstract, war between judge and judge for fees, was war between dog and dog for a bone.

Now come the real sufferers — the people. Subjection to arbitrary power is an evil, or nothing is; an evil, and that an all-comprehensive one.

Now, every power thus acquired is in its essence arbitrary; for, if to the purpose of obtaining anything valuable — call it money, call it power — allowance is given to a man, on any occasion, at pleasure, to come out with a lie; which done, the power becomes his, what is it he cannot do? For where is the occasion on which a lie cannot be told? And, in particular, on the whole expanse of the field of law, no limits being assigned, where is the lie which, if, in his conception, any purpose of his, whatever it be, will be answered by it, may not be told?

Accordingly, wilful falsehoods, more palpably repugnant to truth, were never uttered, than may, by all who choose to see it, be seen to have been uttered, and for the purpose of obtaining power, by English judges.

Take, for example, the common recovery fiction; a tissue of lies, such, that to convey to a non-lawyer any comprehensive conception of it, would require an indefinite multitude of pages, after the reading of which it would be conceived confusedly or not at all. But what belongs to the present purpose will be as intelligible as it is undeniable.

I. Descriptions of persons stolen from, three:—1. Children, in whose favour a mass of immoveable property had been intended to be made secure against alienation; eventual subject-matter of this property, no less than the soil of all England: 2. Landowners, by whom, by payment of the fees exacted from them, was purchased of the judges of the court in question — the Common Pleas — that power of alienation which they ought to have gratis, or not at all: 3. Professional men — conveyancers (the whole fraternity of them)—despoiled in this way of a share of such their business, by the intrusion of these judges.

Now for the falsehood — the artful and shameless predatory falsehood — by which all these exploits were performed. Officiating at all times in the court in which these judges were sitting, was a functionary, styled *the crier of the court;* his function, calling individuals, in proportion as their attendance was required, into the presence of the judges. Sole source and means of his subsistence, fees; in magnitude, the aggregate of them correspondent to the nature of his function. Behold now the fiction. A quantity of parchment having been soiled by a compound of absurdities and falsehoods, prepared for the purpose, and fees in proportion received for the same, a decision was by these same judges pronounced, declaring the restriction taken off, and the proprietors so far free to alienate: to the parties respectively despoiled, a pretended equivalent being given, of which presently. Persons whom it was wanted for — (not to speak of persons not yet *in esse*, and in whose instance accordingly disappointment might be prevented from taking place) young persons in existence in indefinite multitudes, from whom, on the several occasions in question, their property, though as yet but in expectancy, was thus taken — taken by these same judges, whose duty it was to secure it to them. Now for the equivalent. To all persons thus circumstanced, it was thought meet to administer satisfaction: it was by a speech to the following effect, that the healing balm was applied: — "Children, we take your estate from you, but for the loss of it, you will not be the worse. Here is Mr. *Moreland*," (that was always the gentleman's name:) "he happens to have an estate of exactly the same value: this we will take from him, and it shall be your's."

Exactly in this way, on one and the same

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day, were estates in any number disposed of at the appointed price by these supposed, and by suitors intituled, ministers of justice. Such was the proceeding then: and such it continues to this day.*

There we have one fiction: now for a parallel to it. Once upon a time, in Fairy land, in the court of a certain judge, under the seat of the crier of the court, was a gold mine. On a touch given to the seat by a wand, kept for the purpose by the judge, out flowed at any time a quantity of gold ready melted, into an appropriate receptacle, and on the turning of a cock, stopt. Here we have a fiction, which, if it be a silly, is at any rate an innocent one. Be it ever so silly, is there anything in it more palpably repugnant to truth than in that predatory and flagitious one.

Two points, could they be but settled, might here afford to curiosity its aliment:—

1. Point the first. Those fictions, such as they are, in what number could they be picked up like toad-stools, in the field of common law! By dozens at any rate, or by scores, to go no farther, they might be counted.

Roman lawyers too, have theirs. But for every Rome-bred fiction, a dozen English-bred ones, to speak within compass, might be found.

2. Point the second. Birth-day of the fiction — latest hatched, and let fly to prey upon the people — was it the day next before that of the first newspaper? — was it that of the last witch burnt or hanged? Be the species of imposition what it may — be the field of deception what it may, a time there will always be, after which new impostures will not grow on it. But, as to the time when those which have root at present will be weeded out, this question is a very different one.

By the operation here in question, good (will it be said?) good, in a certain shape, was done? — good, for example, of the nature of that which it belongs to political economy and constitutional law to give indication? Be it so. But, be it ever so great, good, considered as actually resulting, is, on this occasion, nothing to the purpose: only lest it should be thought to be overlooked, is mention thus made of it: the only good which is to the purpose is the good intended.

Lastly, as to certain ulterior uses of this species of poetry to the reverend and learned poets. Those of the coarsest and most obvious sort — power-stealing and money-stealing — having been already brought to view.

To complete the catalogue, require to be added, — 1. Benefit from the double fountain, constituted as above; 2. Benefit from the thickening thus given to confusion.

1. First, as to the double fountain. A juggler there was, and a fountain he had, out of which at command flowed wine, red or white, without mixture. This reality, for such it is, may help to explain one use, and that a universally applying one; the purpose, whatever it be, is it by the truth that it is best served? The argument is drawn from the truth side. Is it by the fiction? Side from which the argument is drawn, the falsehood.

Such being the emblem, now for the application. Be the mess what it may, truth is always the substance of it; lies, how coarse and gross soever, but the *seasoning*. The purpose, whatever it be — is it by the fiction that it is best served? From the fiction side it is that the argument is drawn: is it by the truth alone that the purpose can be served? It is to the truth, with whatsoever reluctance, that recourse is had. Thus *quacunque via data*, as the law Latin phrase has it, the point is gained.

2. Lastly, as to the benefit from the confusion that, proportioned to the extent to which non-conception, or what is so much better, misconception in regard to the rule of action, has place on the part of those who are made to suffer, in proportion to their non-compliance with it, the particular interest of Judge and Co. is served: these are propositions, of which the whole substance of this our humble petition is one continual proof. That the giving to these two so intimately connected states of things the whole policy of this class of politicians, has from first to last been universally directed, is another proposition, to which the same proof applies itself with the same force. But to say, that by and in proportion to the degree of confusion that has place in the aggregate mass of ideas produced by the aggregate mass of discourse, expressed in relation to the subject and received, this same purpose is answered, is but to say the same thing in other words.

If, to the intelligibility of that which is here said about unintelligibility, any addition can be made by the sort of imagery so much in request, — out of each one of Judge and Co.'s double fountains, rises at all times a thick fog. Each one after another will be brought to view, namely, under the head of device the eleventh — *Decision on grounds foreign to the merits.*

V. *Device the Fifth — Oaths for the establishment of the Mendacity, necessitated.*

That the ceremony of an oath is the instrument by means of which the licence to commit mendacity is effected, has just been stated. Now as to the mode of applying the instrument to this purpose. Nothing can be more simple. On the occasion of any statement, about to be made, on a juridical occasion, or for an eventually juridical purpose, is it your wish (you being a judge) that mendacity should *not* have place, you cause the individual by whom the statement is made, to have,

* The form was abolished by 3 & 4 W. IV. c. 74, (28th August 1833.)—*Ed.*

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just before the making of it, borne his part in this same ceremony: on the occasion of any statement so made, is it your wish that mendacity *should* have place, you abstain from requiring the performance of this same ceremony: and, at the same time, you give to the naked statement so made, whatsoever effect it suits your purpose to give to it.

Not that it was for this purpose that the ceremony itself was invented: for, along with the *time*, the *cause* of its invention is lost in the darkness of the early ages: all that, on this occasion, is meant is — that it is for the purpose of organizing mendacity, and giving to that vice every practical increase, that the ceremony, being found already in use, was taken advantage of.

Properties, which we shall now present to the view of the Honourable House this instrument as possessing, are the following: they consist in its being —

1. *Needless;* to wit, for the purpose of repressing mendacity on judicial occasions, or for a judicial purpose.

2. *Inefficacious*, on these same occasions.

3. *Mischievous*, to an enormous extent, in a variety of ways.

4. *Inconsistent* with the received notions belonging to *natural religion.*

5. *Anti-scriptural.*

6. *Useful to Judge and Co.*, eminently subservient to their particular and sinister interest; and as such cherished by them.

First, as to *needlessness.* For the needlessness of this ceremony, on the sort of occasion, or for the sort of purpose in question, we humbly call to witness your Honourable House: prime in legislation is in effect the part borne by you. In your hands is the public purse: with you, with few and casual exceptions, laws originate. Take any law whatsoever, in the scale of importance what, in comparison with the power of making that same law, is the power of exercising, in relation to it, an act of judicature, reversable of course at pleasure by the powers by which the law was enacted? Well then — when at the instance of the Honourable House a law has been enacted — this same law, was it passed upon determinate grounds, or was it *groundless?* To style it *groundless*, would be to pass condemnation on it. It having determinate grounds, and those grounds appropriate, of what then are those same grounds composed?

Answer: Of matters of fact, and nothing else; for nothing else is there of which they can be composed. On the occasion in question, these same matters of fact, whatsoever they may be, will respectively either be considered as already sufficiently notorious, or not: if not, then will the existence of them, for the purpose of this same act of legislation, as for the purpose of any act of judicature, be considered as requiring to be established by evidence. No otherwise than in as far as thus grounded and warranted, can any law whatever be anything better than an act of wanton despotism. Most laudable accordingly — unmatched in any other country upon earth, is the scrutinizing attention and perseverance so constantly employed by your Honourable House in the collection of appropriate witnesses, and the elicitation of their testimony. Of their testimony? and in what shape? In that which is the very best possible: *oral* examination, subject to counter-interrogation from all quarters, re-examination at any time, and with the maximum of correctness secured to it by being minuted down as elicited, and subjected afterwards to correction by the individual from whom it emanated. Behold here a mode of proceeding, dictated by a real desire to elicit true, and appropriately complete, information: the desire accompanied with a thorough knowledge of the most effectual means for the accomplishment of it.

Well then. For securing to each article of information thus elicited, the same character of truth at the hands of each witness, putting out of the question the spiritual motive, what are the temporal motives which, in the shape of eventual punishment, in case of mendacity, your Honourable House makes application of? Answer: in a direct shape, imprisonment only; with or without *fine:* in an unimmediate and indirect shape, fine, for the extraction of which the imprisonment is the only instrument.

Now then, as to the ceremony called *swearing*, or *taking an oath.* Whether it be for want of power, whether it be for want of will — (the single case of election judicature excepted, and *that* no otherwise than in pursuance of a special act of parliament) — no use does your Honourable House ever make of this same ceremony. What follows? Does mendacity find the Honourable House impotent? On the contrary: much more effectual is its power against this vice than that of ordinary judicature, with its expensive prosecution and severer punishment. Why? Because, while the mode of elicitation employed is such as needs not the assistance of the ceremony, its mode of procedure is such, as is able to cause the punishment to follow instantaneously upon the offence. Yet, has it as yet a weakness, to which consistency will one day, it is hoped, apply the obvious remedy. Standing at the highest pitch at the commencement of each parliament, it sinks (this indispensable power) as the parliament advances in age, till, at last, it is sunk in utter decrepitude.

After such a demonstration of the needlessness of this ceremony, but for the importance and novelty of the subject, other proofs might be put aside, as being themselves needless: important the subject may well be styled, or

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no other is so: for, so long as this ceremony has place, justice, to the prodigious extent that will be seen, is absolutely incapable of having place.

To the benefit of the testimony of Quakers, ever since the year 1696, justice has, without the benefit of this ceremony, by various statutes, been admitted, in cases called *civil* cases: and now, by a statute of 1828, in cases called *criminal* and *penal* cases. If, then, as a security against mendacity, the ceremony is indispensable in the case of all other men, can it be needless or safely omitted in the case of these?

Moreover, on any one of these occasions, what is there to hinder a non-Quaker from personating a Quaker? Clothed in the habit, and speaking the language of a Quaker, suppose a non-Quaker, by his evidence, giving success to Doe, in a case in which, otherwise, it would have gone to Roe. The imposture afterwards discovered, would success change hands?

On the evidence of an impostor of this sort, suppose a man convicted of murder, and executed. The imposture being afterwards discovered, would the felony be transmuted into a non-felony, and the hanging operation be, in law language, declared void?

Not only in the case of a class of men so well known as this of *Quakers*, but in the case of a class comparatively so little known as that of *Moravians*, has justice been in possession of this same benefit, ever since the year 1749, by statute 22 Geo. II. ch. 30.

Of detriment to justice from this allowance, in what instance was any suspicion ever entertained? Was not the assuredness of the absence of all increased danger of mendacity, from this admission, in *civil* cases, — was not *this* the cause of the extension given to it in criminal cases?

So much for *needlessness*.

2. Now as to *inefficiency*. Considered with reference to the purpose here in question, oaths stand distinguished into *assertory* and *promissory*: but, in both cases, the sanction is precisely the same. Take then, for example, oaths of the *promissory* sort: because these stand clear of various points of contestation, which have place in the case of *assertory* oaths: whereas in the case of a promissory oath, if violation has place, seldom does the fact of the violation stand exposed to doubt.

Now then for the examples. Example the first: Protestant sees in Ireland, bishops 22: archbishops 4: together 26. Previously to investiture, oath taken by every bishop, promising to see that in every parish within his diocese, a school of a certain description shall have place. Of the aggregate of these oaths, what, in the year 1825, was the aggregate fruit? Performances 782: perjuries 480. When received and communicated—(so at least says the solemn office)—when festined and communicated, behold the preservative power of the Holy Ghost in these minds against perjury.

Example the second: In England, through the university of Oxford, pass one half of the 12,000 or 13,000 Church-of-England clergy; through the university of Cambridge the other half. In *Oxford*, pre-eminent in uselessness and frivolousness, a volume of statutes receives at entrance from each member, in every article of it, as security for observance, an appropriate promissory oath.

Now for the effect. On no day does any one of these academics tread on the pavement of that same holy city, without trampling upon some one or more of these oaths. Held up to the inexorably conniving eyes of the constituted authorities, has been the contempt thus put upon this ceremony, — held up, not by strangers only, but by members — not by lay-members only, but by clerical members: — for more than the last half century, by a clerical member—Vicesimus Knox — in a work, editions of which, in number between 20 or 30 are in circulation.

So much for promissory oaths. To come back to assertory oaths. Stand forward *custom-house oaths*.* For demonstration of the inefficiency — the uncontested and incontestible inefficiency—these two words supersede volumes: exacted to a vast extent the assertion of facts, of which in the nature of things it is not possible that the assertor should have had any knowledge. How prodigious the benefit to finance and trade, if *asseveration*, with appropriate punishment in case of mendacity, were substituted, and by adverse interrogation, a defendant made subjectible to a limited loss, as by equity interrogation he is to loss of all he has! Thus simple is the arrangement, by which, without the illusory assistance of the thus universally contemned ceremony, finance might be made to assume a new and healthful face; trade be made to receive changes in great variety, generally regarded as beneficial; and pounds, by hundreds of thousands a-year — not to say millions, be saved.

So much for needlessness and inefficaciousness.

3. Now as to *mischievousness*. Of the immense mass of evil constantly flowing from this source, a part, and but a part — has as yet been presented to the view of the Honourable House: — namely, under the last head, the head of *mendacity*.

1. By so simple a process as the declining to act a part in this ceremony, any man, who has been the sole percipient witness to a crime may, whatever be that crime—murder, or still worse — after appearing as summoned, give impunity to it: without the trouble or for-

* *Vide supra*, p. 188.

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mality, producing thus the effect of pardon: sharing thus with his majesty this branch of the prerogative, and even in cases, in which his said majesty stands debarred from exercising it.

2. By the same easy process, in a case called *civil*, may any man give to any man any estate of any other man.

Not quite so easy (says somebody.) For would not this be a contempt? and would he not of course be committed?

May be so: but when the murderer has been let off, or the man in the right has lost his cause, would the commitment last for life? — in a word, what would become of it?

But to no such peril need he expose himself. A process there is which is still easier: "*I am an atheist.*" He need but pronounce these four words. The pardon is sealed; or Doe's estate is given to Roe.

But of this, more, presently.

Behold now perjury established by law: established on the most extensive — established on an all-comprehensive scale: established by impunity, coupled with remuneration altogether irresistible. Such is the effect of *test oaths*. Of these oaths, some are or may be assertory, some promissory, some assertory and promissory in one: declaration of opinions entertained: declaration of course of actions determined to be pursued, or of opinion determined to be entertained: to be entertained, spite of all conviction and persuasion to the contrary. For perjury in this shape, premium, the highest given for good desert in any shape, — for appropriate aptitude, in the official situations, the most richly remunerated. Of the whole of the expenditure of government, a vast proportion thus employed in raising annual and continually increasing crops of perjuries; and while such is the reward, impunity is absolute and secure.

Oh the admirable security! A man who, with or without pecuniary reward, has, for any number of years together as above, been leading a life of perjury, is to be regarded — not only as capable, but as almost sure, of being stopt from giving his acceptance to any of the very richest rewards in the king's gift: stopt by the fear of no more than what, if anything, may follow from one single instance of perjury, and that a completely unpunishable one — made to refuse for example, an archbishoprick of Canterbury, with its £25,000 a-year, and its *et cæteras* upon *et cæteras!!!*

Sowing oaths and reaping perjuries is a mode of husbandry, in a particular instance, affected to be disapproved by Blackstone. But in that instance, compared with this, the scale is that of a garden-pot to that of a field.

Bidding thus high for perjury, is it possible that of the self-same man it should be the sincere wish to prevent it?

What, then (says somebody,) the fear of punishment at the hands of the Almighty,— is that to be set down as nothing? The answer is, yes; on this particular occasion, as amounting absolutely to nothing: but of this presently.

By the inducting of these same reverend, right reverend, and most reverend, self-styled perjurers (for so they are specially declared to be by these their own statutes,) has been established the national school of church of England orthodoxy.

These things considered, and the use made of oaths on judicial occasions,—Westminster Hall, not to mention its near neighbourhood, may it not be styled the great *National School* of perjury?

What, then (says somebody,) are all *tests* meant to be thus condemned? Oh no: tests, for declarations of the party concurred with, by a man, on this or that occasion, may be useful: useful, and even necessary; and at any rate unexceptionable: in some cases by acceptance, in other cases by non-acceptance, useful indications may be afforded. On an occasion of this sort, who are they whom you choose to be considered as siding with? This is the question, propounded by the call to join in the declaration; and in this case no mendacity need have place.

4. So much for needlessness, inefficiency, and mischievousness. Now as to repugnance to natural religion.

This supposed punishment for the profanation, on whom is the infliction of it supposed to depend? On the Almighty? No; but, in the first instance at any rate, on man alone. No oath tendered, no offence is committed: no offence committed, on no man punishment inflicted. According to the oath-employing theory, man is the master, the Almighty the servant. In respect to the treatment to be given to the supposed liar, the Almighty is not left to his own choice. In the event in question, at the requisition of the human, the divine functionary is made to inflict an extra punishment. Exactly of a piece with the authority exercised by a chief-justice of the King's Bench over the sheriff of a county, is the authority there, by every man who has purchased it, pretended to be exercised over the Almighty. In Westminster-Hall procedure, the chief-justice is the magisterial officer; the sheriff of the county in question a ministerial officer, acting under him: a written instrument, called *a writ*, the medium of communication, through which, to the subordinate, the command of his superordinate is signified.

In the case of the *oath*, the man by whom the oath is administered performs the part of the chief-justice; the Almighty, that of the sheriff acting under him; and the kiss given to the book performs the service of the writ.

Is it by a country attorney, dignified by

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the title of Master-extraordinary in Chancery — is it by this personage that the oath is administered? In this case, it is the attorney that the Almighty has for his master now; and by the shilling paid to the attorney — by this shilling it is, that the Almighty is hired.

On the expectation of the addition thus to be produced to the spiritual punishment appointed by the Almighty of himself for mendacity — on this alone depends the whole of the molehill of advantage, if any such there be, capable of being set against the mountain of evil that has just been brought to view.

Of mendacity, variable is the maleficence, on a scale corresponding to that of the maleficent act, of which it is made, or endeavoured to be made, the instrument: of the profanation of the ceremony, the guilt, if any, is one and the same.

Infinitely diversified in respect of degree of importance, are the purposes to which this instrument, such as it is, is wont to be applied. Does it, in its nature, possess any capacity of being, by its variability in quantity, and thence in form, accommodated to these several purposes? Not any.

The punishment, if any, the infliction of which is expected, is in every instance the same, for which the attorney, for his shilling, draws upon the Almighty. This draught, will it be honoured?

But (says somebody,) for binding a man's attention to the importance of the occasion, some mark of distinction between an assertion that *is*, and one that is *not* intended to be legally operative — may it not be of use? Yes, doubtless. But for this purpose, no such preposterous pretended assumption of authority over the Creator by the creature is either necessary, or in any degree useful. By the word *asseveration*, the appropriate extraordinary application of the faculty of attention is already sufficiently indicated.

On occasions of the sort in question, in the instance of the people called Quakers, by special allowance from the legislature, already in use is the word *affirmation*. This word might not improperly serve. But the word *asseveration* is, perhaps, in some degree, preferable; since it presents to view more assuredly than does the word *affirmation*, the idea of a special degree of attention and decision beyond what has place on ordinary and comparatively unimportant occasions.

5. Now as to *repugnancy to Scripture*. — "Thou shalt not take the name of the Lord thy God in vain:" so says the second of the ten commandments. "*Swear not at all:*" these are the words of Jesus, as reported in the gospels. "*Above all things, swear not:*" these are the words of St. James, in his Epistle. But for texts of Scripture, when troublesome, there are rules of interpretation: one of them is, the rule of contraries.

Says God to man, — thou shalt not perform any such ceremony. Says man to God, — I do perform this ceremony, and thou shalt punish every instance of disregard to it. Suppose the Almighty prepared to punish every or any instance of disregard to this ceremony, you suppose him employed in sanctioning disobedience to his own express commandments.

If, to the compellers of such oaths, punishment, in a life to come, were at all an object of consideration, the punishment attached to disobedience — to commandments thus plain and positive, would produce in their minds an impression rather more efficacious, than what has been seen produced, as above, by the punishment supposed to be attached to a disregard for the purely human and recently invented ceremony.

But, for the use of so useful an instrument of profitable maleficence, no punishment is too great to be encountered. "The punishment," say they, "what matters it? Turning aside from it, we extinguish it."

The thus imagined supernatural punishment, has it really any efficiency in the character of an auxiliary to human punishment, and a security against maleficence in its several shapes? If yes, why thus narrow the benefit producible by it? — why not make out at once a complete list of maleficent acts of all sorts, fit to be, in due form of law, converted into offences? This done, collectively or upon occasion severally, the promissory declaration may be attached to them, and the book kissed.

This done, and not before, consistency will take the place of its opposite; and so far the practice of swearing, against conviction, cease.

6. So much for needlessness, inefficiency, repugnancy to natural religion, repugnancy to revealed religion, as well as abundancy in mischievousness. Now for *use to Judge and Co.* — Multifarious and extensive is this use. The capital use, establishment of the mendacity-licence, with the increase given to the profit by written pleadings, keeps pace with the mischievousness of the practice, and has been already brought to view.

But the use of oaths to the partnership does not stop here. The greater the quantity of immorality, in all shapes, but more particularly in that of injustice, the greater the quantity of the profits: for, the more immorality, the more transgressions; the more transgressions, the more suits; the more suits, the more fees. This series presents a *clue*, or say a *key*, which comes to the same thing, to all the arrangements which enter into the composition of judge-made law.

By the confusion with which the field of law has thus been covered, observance of oaths, or breach of oaths, according as countenanced by a judge, being regarded as a merit and a duty, thus it is that judges have come to be regarded as invested with the power of converting *right* into *wrong*, and *wrong* into

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right: right and wrong following continually the finger (as the phrase is) of the law.

Decency, as well as that inadequate degree of efficiency which their own particular interest requires to be given to those parts of the law on which personal security depends, join in necessitating, as above, some restraint on mendacity in certain cases: at the same time, their official and professional interest requires that, to a vast extent, that same security should be inefficient. By a compromise between these two antagonising interests, has been produced the form of the prosecution for perjury.

Not applying the temporal punishment but in the comparatively small number of instances in which it has been preceded by this ceremony, and application of it requiring a separate suit, with two witnesses to give effect to it — a suit, of which the expense to the prosecutor is great, and the advantage, in case of success, limited to the few cases in which it has for its effect the reversal of the judgment grounded on the false testimony, they thus make a show, and no more than a show, of wishing to extinguish the vice, to the propagation of which, so far as profitable to them, their endeavours have been so diligently and successfully directed. Bating this rare case, ere any such prosecution can have been instituted, signal must have been the triumph of passion over prudence. Among ten thousand perjuries committed, is there so much as one punished? For *ten* might have been put a hundred, or for a hundred a thousand.

Built originally for feasting, Westminster Hall is thus become the great national school for perjury.

Picking out men, in whose breasts the aversion to mendacity is strongest and most incontestible — picking out these men, and expelling them from the witness's box with ignominy stampt on their characters — is another service extracted by Judge and Co. from this ceremony.

In the instance of one half of that order of men, who are so richly paid for professing to impress morality, in all its shapes, upon the conduct of the rest of the community, the universality of habitual perjury has been already brought to view.

One of those suits, which the existing system engenders in such multitudes — a suit in which one of the parties is conscious of being in the wrong, has (suppose) place. One percipient witness there is, who being tendered for admission as a narrating witness, is on good grounds believed by this dishonest suitor to be an atheist. But, atheist as he is, nothing does it happen to him to have, or to be so much as supposed to have, to bias him, and warp his testimony one way or the other: and no man is maleficent without a motive.

Answering to his call, this man places himself in the witness's box. The learned counsel has his instructions. "Sir," says he, "do you believe in a God?" What follows? Answering falsely, the proposed witness is admitted; he cannot be rejected: answering truly, he is silenced, and turned out with ignominy. The martyr to virtue, the martyr to veracity, receives the treatment given to a convicted felon.

The atheist was unseen and silent. These lawyers drag him into broad daylight, and force into the public mind the poison from this confessing and thus corrupting tongue.

What will not the advocate do — what will not the fee-fed judge support him in doing for their fees? An inquisition, this high — commission court, all over. For the purpose of thus punishing the offence, they create it: themselves accessaries before the fact: themselves suborners.

Individuals they thus invest with the power of pardon — thus do these sworn guardians of the king's prerogative. Individuals?—and what individuals? In the first place, these same atheists; in the next place, all Christians and other theists, whom they have succeeded in rendering mendacious enough to pretend to be atheists.

A murderer (suppose) is on his trial: necessary to conviction is the testimony of an individual, who has just mounted the box. Before the oath is tendered,—"First (may it please your lordship,) let me ask this man a question," says the counsel for the murderer. Thereupon comes the dialogue. Counsel — "Sir, do you believe in a God?" Proposed witness — "No, sir." Judge — "Away with him; his evidence is inadmissible." Out walk they, arm-in-arm, murderer and atheist together, laughing: murderer, to commit other murders, pregnant with other fees.

Robbers in gangs go about (suppose,) and to suppress testimony, murdering all whom they rob, and all who are supposed by them to have seen or to be about to see them rob. On being taken, one of them (suppose) turns king's evidence. Question by prisoner or prisoner's counsel — Do you believe in a God? Answer in the negative: off goes the witness, and off with him goes the prisoner. Will it be said, that the condition, not having been performed, that is to say, the procurement of the defendant's conviction, the pardon will not be granted, and the accomplice will be hanged? Not he, indeed. No sooner does any one of these murderers enter the witness box, than by Judge and Co., if not an atheist already, he is thus converted to atheism. The consequence is — the necessary evidence being thus excluded, the virtual pardon of the whole gang — this man along with the rest — takes place of course.

Another use to Judge and Co., from the

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all-corrupting ceremony: the shilling per oath received for the administration thereof: the shillings in front, with pounds, in many cases, in the back-ground. Hence, patronage, with reference to the situations in which this profit is received. Considerations these by no means to be neglected. What is there that is ever overlooked in the account of fees?

Another case. An instrument in the hand of hypocrisy — an instrument to cajole a jury with — is another character in which the ceremony is of special use to a judge. It forms a charm, by the fence of which, transgression in every shape is rendered impossible to him. Gentlemen of the jury, you are upon your oaths: I am upon mine. Mine calls upon me to do so and so, quoth the ermined hypocrite: out comes thereupon whatever happens to suit his purpose. On any adequately great occasion, appropriate gesture — application of hand to bosom, might give increase to stage effect. Speaking of a noble lord, as having been saying so and so — "My lords," said a judge once, "he smote that sacred tabernacle of truth, his bosom." Your oath? What oath? Who ever saw it?—where is it to be seen, unless it be on the back of the roll on which is written the body of your common law? One of three things. Either you never took any such oath at all, or if you did, it was either a nugatory or a maleficent one: a promise, for example, on all occasions to make sacrifice of all other interests to the interest of the ruling one. An old printed book there is, intituled The Book of Oaths: and of one or other of these two descriptions are the several oaths therein stated as taken by judges. At any rate, whatever oath you took, if any, in no one's presence was it taken but that of him by whom it was administered. In what better light, therefore, than that of a fresh act of mendacity and imposture, can any such mention of an oath be ever regarded by a reflecting juryman?

So much for the punishment of mendacity under the existing system. Now suppose a system substituted, having for its ends in view the ends of justice. Great beyond present possibility of conception would be the security which against fraud and deception would be given, by attaching punishment to mendacity. In whatever instance mendacity had been uttered, either on a judicial occasion or for a judicial purpose, punishment would stand attached to it of course. Against fraud and maleficent deception, to whatsoever purpose endeavoured to be applied, great not only beyond example but beyond conception would be the security thus afforded. Oaths and perjuries abolished,—punishment for mendacity would be at liberty to bend itself, and would of course bend itself to the form of every offence, to every modification of which the evil of an offence is susceptible. Judicial is the *occasion*, in so far as it is in the course of a suit actually commenced, that the assertion is elicited: judicial the *purpose*, that is to say, the eventual purpose, where the assertion is uttered for the purpose of being eventually employed as evidence, should ever a suit have place, on the occasion of which it might serve as evidence.

Take, for instance, a false *recital* in a conveyance, in an engagement meant to be obligatory; false vouchers in accounts.

Thus, in the case of a voucher. Receptor in account with Creditor, produces from Venditor or from Faber a *voucher*, acknowledging the receipt of a sum of money for goods furnished to Receptor, to be employed in the service of Creditor. In fact, he has received no more than half the sum: the other half being undue profit divided between them. Under the existing system, on evidence in no better shape, are accounts audited: evidence received as conclusive, the mere production of a receipt. To Creditor in this case, what difference does it make whether it be by a forged receipt that he is defrauded of this money, or by a falsely asserting, though genuine receipt, as above? Yes, for no such false assertion is there any punishment appointed under the name of punishment: under the name of satisfaction, refunding of the undue profit, yes. But for this a suit in equity is necessary; a suit in which, for the recovery of five shillings, at the end of five years, or in case of appeal ten years, creditors may have to advance £500 or £1000, losing in case of success a fourth part of the money in unallowed costs. On no better security against fraud than this, have public accountants received discharges for hundreds of millions of pounds.

On the ground of any such *voucher*, any such *Venditor* or *Faber* might be made examinable it any time, and in case of original fraud, as above, or false asseveration in the course of the examination, punishable according to the quality and quantity of the wrong.

Fraudulently or otherwise mendaciously false recital in conveyances, or in engagements meant to be obligatory, (including contracts) — falsehood in the recitals of instruments, in which registration of obligatory dealings of either of those two classes is performed, newspaper or other paper under false denominations, printed and circulated for the purpose of influencing the prices of public securities — all these vehicles of falsehood would thus receive a mode and degree of repression at present unexampled and until now unconceived.

Thus intimate is the connexion between legalized swearing and fraud: in a word, as has been seen, between this compulsorily and irresistibly legalized vice, and crime and immorality in every imaginable shape: with lawyer's profit from every imaginable source.

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Swear not at all! — cease to take the name of the Lord in vain! By these commandments, repeated every day at table, with or without the grace before meat in every house, more would be done towards the extinction of crime and immorality, than would ever be done by preaching, though every house were to have a pulpit in it.

How long will men continue to seek to cause God to apply a punishment he had no intention of applying? — To cause him!—say rather to *force* him, leaving only the time and the quantum to his choice? For, on the ceremony performed, the everlasting punishment is assumed to follow as a thing of course.

When will legislators and judges cease to be suborners of perjury? — of perjury on an all-comprehensive scale?

The passion for these universal oaths, and (which is the same thing) for perjuries, can there be no means of administering to its gratification without the boundless expenditure of crime, immorality, and consequent misery? If without the special and specific mischief produced in so many shapes as above, simple oaths, with correspondent perjuries, will content them, perjuries of both sorts, assertory and promissory, they may have their fill of. Each man may perform them for himself, and he may have strings of beads to tell them on: each man may thus perform them for himself; or, in proportion to his opulence, he may, for adequate remuneration, cause them, in any desirable quantity, to be performed by others. By means of pre-established signs, he might even for this same purpose press into the service the powers of machinery and steam. He might perform them in the Chinese style: and for every oath taken, have a saucer broken: and thus, at no greater expense than the sacrifice of religion, morality, and happiness, confer a benefit on that branch of trade. For the loss by *assertory* perjuries, *amateurs* might indemnify themselves by increase given to the stock of promissory ones.

If this be not agreeable, let all hitherto published editions of the Bible be called in, and appropriately amended editions substituted. Out of, "Thou shalt not take the name of the Lord thy God in vain," let be omitted the word *not*. For "Swear not at all," after the word *swear*, let be inserted the words *swear and cause swear, whatever you will*, whenever by you or yours anything is to be got by it. Thus would be wiped clean the irreligiousness of the practice; and nothing would be left in it worse than the immorality of it.

Not inconsiderable is the service so recently rendered by the extending to cases styled criminal, the admission so long ago given to Quakers' and Moravians' evidence in cases styled civil. Yet how inadequate, and thence how inconsistent the remedy, if it stops there?

Finally, in whatsoever is now deemed and taken to be perjury, guilt, over and above that which consists in the mendacity, either has or has not place: if guilt there is none, then, by the supposition, the ceremony by which the mendacity is constituted perjury, is of no use: if guilt there is, we humbly pray that whatsoever by the Honourable House can be done, may be done, towards exonerating us and the rest of his Majesty's subjects from the burthen of it: and in particular, such of us, whose destiny on any occasion it may be to serve as jurymen: for if in perjury there may be guilt, we see not how, by men's sitting in a jury-box, it is converted into innocence.

Accordingly, that which, in relation to this subject we pray for, in conclusion, is — that by the substitution of the words *affirm* and *affirmation*, or *asseverate* and *asseveration*, to the words *swear* and *oath*, all persons at whose hands, on a judicial occasion, any declaration in relation to a matter of fact is elicited or received, may be put upon the same footing as, in and by the statute of the 9th of his present Majesty, [George IV.] chapter 32, Quakers and Moravians are, in respect of matters therein mentioned: and that on no occasion on which, in the course of a trial, a person is called upon to deliver evidence, any question be put to him, having for its object the causing him to make declaration of any opinion entertained by him on the subject of religion.

Now for the petty juryman's oath. Assertory or promissory? — to which class shall it be aggregated? As the interval between promise and performance lessens, the promissory approaches to, till at last it coincides with, the assertory. Assertory, beyond doubt, is the *witness's* oath: as clearly would be the *juryman's*, if the verdict followed upon the hearing of each witness's testimony as promptly as the delivery of that same testimony follows upon the performance of the swearing ceremony.

Of this instrument, the inefficiency as to the production of the professedly desired effect — that is to say, the exclusion of mendacity, — its efficiency, on the contrary, as to the production of the opposite effect, with the perjury in addition to it, — these are the only results, the exhibition of which belongs, in strictness, to the present purpose. But another point, too closely connected with this, and too important to be passed over, is its *mischievousness*. Another distinguishable point is the absurdity of this part of the institution: and without bringing this likewise into view, neither the inefficiency, nor the whole of the misefficiency, can be brought to view,

Indeed, to show the absurdity of the notion is to show its mischievousness: at any rate, if intellectual imbecility in the public mind

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be a mischief, and adherence to gross absurdity a proof of it.

Mark well the state of the case. Men acting together in a body, *twelve:* business of the body, declaration of an opinion on two matters taken in conjunction — matter of fact and matter of law.

First, as to the matter of fact. Subject-matter of the declaration, a question between A and B: A being either an individual, or a functionary acting in behalf of the public. On a certain occasion, at the time and place in question, did an individual fact, belonging to a certain species of facts, take place or not? This species of fact — is it of the number of those in relation to which provision has been and continues to be made by such or such a portion of the law?

Of this sort in every case are two points, in relation to which, each man of the twelve is called upon to deliver his opinion, as expressed in one or other of two propositions, one or the other of which, they being mutually contradictory propositions, cannot fail of being true: laying out of the question, for simplicity's sake, the rare case of a sort of verdict called *special.*

Yes; on the question of law: for, the comparatively rare case of a special verdict excepted, in the subject-matter of the opinion declared is the matter of law included, as often as a verdict is delivered. Say, in cases called *civil,* but implicitly: but in cases called *penal,* as often as the verdict is against the defendant, most explicitly. For, in the legal sense of the word *guilty* (which is the only sense here in question,) be the act what it may, doing it is not being *guilty,* unless that act stands prohibited by some law: really existing law in the case of written statute law: feigned to exist in the case of *common law,* in this one of the four or five different meanings of the word.

Be the subject-matter of opinion what it may — be the class of men what it may — be the number of them what it may, — to cause them to be all of one mind, all you have to do is to put into their heads the opinion it is your wish to see adopted, and having stowed them in a jury-chamber, keep them till they are tired of being there.

In what abundance might not time, labour, and argument — all these valuable commodities — thus be saved? Take the uncertainty of the law: this, if not a proper subject for redress, is at any rate, in no inconsiderable degree, an actual subject-matter of complaint. Make but the full use of the jury-boxes, or though it were but of one of them, this uncertainty may at command be changed into unanimity; and this unanimity, if not the same thing as the certainty, will at any rate be the best evidence of it; or, at any rate, the best consolation for the want of it.

Having taken them up from these several courts — taken them up from the seat of aggregate wisdom, which they occupy altogether, — pass through this machine the twelve judges, you save arguments before these sages; pass through it the members of the House of Lords, you save arguments on appeals, and writs of error before the House of Lords.

To return to the unlearned twelve. To each one of them, application is at the same time made of two distinguishable, two widely different, instruments.

One is the *oath.* Of the application made of this instrument, what in this case is the object? To secure, in this instance, verity to that declaration of his which is about to be made.

The other instrument is a certain quantity of *pain:* pain, according as he and the others comport themselves; increasing, in a quantity proportioned to the duration of it, from the slightest imaginable uneasiness, to a torment such as, if endured, would extinguish life; but which no man in the situation in question was ever known, or so much as supposed, to have endured.

A compound of several pains is this same pain: principal ingredients, the pains of hunger and thirst: slighted, and first commencing ingredient, the pain of privation, consisting in the non-exercise of whatsoever other occupations would have been more agreeable.

Under these circumstances, if so it be that, as soon as the evidence with the judge's observations on it, if any, are at a close, either of the two mutually opposite opinions is really entertained by all of them, on the part of no one of them does any breach of his oath take place; as little, on the part of any one of them, does pain in any degree take place: the verdict is pronounced by the foreman, without their going out of the box.

But, as often as, instead of their delivering their verdict, they withdraw into the room prepared for them, then it is that a difference of opinion has place; and then it is that, on the part of all twelve of them together, the appropriate operations begin to be performed. Then it is that, to an indefinite amount, all twelve are made to suffer, that that same number of them, from one to eleven, may be made, and until they have been made, to utter a wilful falsehood, and thus break the oath which they have just been made to take, under the notion of its preventing them from uttering this same falsehood.

True it is, that if any one of them there be, in whose instance pain has had the effect of causing him no longer to entertain the opinion first entertained by him, but to entertain, instead of it, the opposite opinion declared by the verdict, no such falsehood will in his instance have been uttered. But exists there that person who can really believe that, in

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the case in question, pain can have any such effect?

And, even supposing the effect produced, where is the benefit to justice? Of the two opposite verdicts, to which is it that the pain will produce the transition? for it presses upon the whole number of them. Upon the adopters of the verdict eventually delivered, as well as upon the opposers of it; and whichever of the verdicts it be that is thus adopted, what reason can there be for regarding this as being more likely than its opposite to be the proper one?

But though to produce a change in the opinion really entertained is a thing which pain cannot do in the instance of any one, yet to produce a change in the opinion declared to be entertained, is a thing which pain, and this very pain, not only can do in the instance of some one of them, but is even known not unfrequently to have done in the instance of all but one.

Of this so triumphantly trumpeted, so anxiously preserved, and so zealously propagated unanimity, what, then, as often as the jury quits the box, is the result? Answer — Two doses: one composed of pains, the other of wilful falsehood and perjury. The dose of falsehood, some number, from one to eleven, are made to swallow; the dose of pains, all twelve: all this without the least imaginable benefit to justice.

The verdict, with the opinion expressed by it, being given, comes now the question — in what way is it, that, on that side, and not on the other, the victory terminated? Answer — In this: the foreman, having been the object of the general choice, the person the most likely to prepare for acceptance one of the two verdicts, is this one. If, then, by any one or more of them the opposite opinion is entertained, declaration will of course be made of it by all those who entertain it, and the number on each side will thus be seen at once.

Whereupon it is, that if to any one of them a reason occurs, which, as appears to him, has not been brought to view by advocate or judge, naturally and generally, every one who has in his own mind any such reason, will out with it. What, in this case, does doubtless now and then happen is, that after all the observations delivered by the experienced advocates and judge together, have failed to produce the impression in question, an observation pronounced by one of the comparatively inexperienced jury has succeeded. But this case, though sometimes exemplified, cannot be stated as the common one.

The oath to make a man speak true: the torture to make him speak false. Such is the contrivance. A two-horse cart; the horses set back to back, with a cart between them: in this behold its parallel.

A contest (and such a contest!) between will and will: and by whom set on foot? By the creator of the unanimity part of the institution. And by whom kept up? By the supporters of it.

In the declaration of the opposing will, others, in any proportion to the whole number, may have joined; thereupon has the pain continued to be endured by all, till those on one side, unable any longer to endure it, have gone over to the other side.

Exists there that man, in whose opinion, by the power of pain, any such change of the judgment from one side to the other ever had place?

Exists there that man, in whose opinion, on any future occasion, any such effect from such a cause is probable?

So much for opinion: now for experience. Experience says, that, while in this assembly, in which there is torture to produce it, unanimity thus constantly takes place, — in another, in which there is no torture to produce it, instances in abundance are continually happening in which it does not take place.

It is by the institution of another sort of jury — the grand jury — that the experience is furnished. Every day, where this institution has place, before these same petty jurymen, in number exactly twelve, had pronounced their pretended unanimous opinion on that same question, they, under the name of grand jurymen, in number from thirteen to twenty-four inclusive, with dissentient voices, in any number, from one to eleven inclusive, had been pronouncing theirs.

Yet, only on one side does a grand jury hear evidence: on the two opposite sides the petty jury. In the opposition and conflict which in the petty jury case has place, is there anything that is of a nature to render coincidence of opinion the more assured? — more assured than when the evidence is all on one side?

Now, if in either of these cases there could be the shadow of a reason for the compulsory unanimity, in which case would it be? In the case of the grand jury assuredly, rather than in that of the petty jury. Why? Because, in the grand jury, as above, only on one side is evidence ever heard: in the petty jury, constantly on both sides. Is it by conflict in evidence that agreement in opinion is more apt to be produced than by agreement in evidence?

Such being the absurdity of the device, such its inefficiency to every good purpose, behold now the bad purpose in relation to which it is *efficient*. One case alone excepted, of which presently.

1. First, as to *justice*. Assured possessor of the irresistible evil, the fabled wishing-cap is yours: enter in triumph into any jury-box you please: on your will depends the verdict,

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Compared with this power of yours, what is the influence of the most skilful judge? He can but cajole: you necessitate. Behold how sure your success, how small the cost of it. Every time the jury have staid out of court so much as an hour, not to say every time they have gone out of court at all — there has been a difference of opinion, and next to a certainty, perjury. Scarcely more than one instance of endurance of the uneasiness for so long a term as forty-eight hours has ever been known. Yours being the verdict, behold in this sufferance the limits to the utmost price you can have to pay for it.

Man of desperate fortunes! would you retrieve them? In civil cases, as often as it happens to you to be on a jury, and the value at stake is such as makes it worth your while, if on the wrong side there is consciousness of wrong, and the case next to a desperate one, the more depraved the character of the wrong-doer, the more assured you will be that an offer to share it with you will not be refused.

In penal cases, keep on the look-out for the richest criminals.

Defendant, with another man's money in your hands, look well over the jury list: — observe whether there be not this or that one of them, whose surely effectual service may be gained by appropriate liberality.

Murderer, incendiary, go through the whole list: if one experiment fails, pass on to another: you have nothing to lose by it — you have everything to gain by it.

2. Now, as to *religion*. Behold the effect here.

Lowering the efficiency of the religious sanction in its natural and genuine state, clear of this spurious pretended additament,—is or is not this an evil? In scarcely more than one known instance has the force of the oath had the effect of causing the torture to be endured for so long a time as eight-and-forty hours. Thus weak being the religious sanction, even with the benefit of this reinforcement, what would be the amount of its influence, if operating alone? Next to nothing would decidedly be the answer, were it not for the torture. But, by the torture, this argument in proof of the inefficiency is, at any rate, weakened, if not repelled altogether. For, from the insufficiency of the religious sanction to prevail over pain when screwed up to such a pitch as to extinguish life, it follows not that any such insufficiency has place where no such pain has place. Oath or no oath, perjury or no perjury, scarcely will any man apprehend for himself, at the hands of the Almighty, punishment for non-fulfilment of an obligation, for performance of which the physical capacity will, in his eyes, be altogether wanting: at any rate, scarcely will it to any man appear probable, that, to any considerable extent, the obligation will, in quality of a cause of such endurance, have been capable of producing any considerable effect: or accordingly, that it is consistent with Almighty wisdom to employ it to such a purpose. And, as to the cessation of the endurance after a duration comparatively so short, why make an attempt, the success of which is plainly impossible?

That in these considerations there is more or less of reason, will hardly be disputed. But from this it follows not, that they will present themselves to everybody: and, in every eye, to which this, or something to this effect, does not present itself, the efficiency of the religious sanction in its natural state will, to say the least, be, by this supposed reinforcement, greatly weakened, not to say reduced to nothing.

By these considerations is moreover suggested a course of experiment, by which, as the degree of efficiency, if any, on the part of this ceremony, no small light would, it should seem, be cast. Continuing to apply the torture as at present in all instances, apply the ceremony in some, omitting it in others: then let observation be made of the proportionable number of instances, in which the jurors betake themselves to the retiring room, and of those in which they do *not*: and in regard to those instances in which they do give this proof of the efficiency of the religious (not forgetting the moral) sanction, minute down the length of the endurance.

Of those right reverend persons, who, as above, had sworn, each of them, to set up and endow schools, the majority are known to have actually forborne to commit the correspondent perjury. But, as to jurors, on the part of all those who have ever sworn to forbear to express an opinion opposite to their own, notwithstanding all torture — in other words, to forbear from perjuring themselves, what instance was ever known of such forbearance? Conclusion this. Supposed or pretended effect of this spurious additament strengthening the instrument it is added to. real effect, weakening it.

Mark now the sort of charity which the unanimity part of the institution, and the use of such an instrument as the oath for the production of the effect, proves and inculcates: proves to have existence on the part of the creators and preservers of it: inculcates into those minds to whom the force of it is applied. Numbers (suppose) eleven on one side, one alone on the other. Says the one of them now to himself — Do what the others may, never will I perjure myself. Saying this, does he not at the same time say this also: Yes — these my brethren, eleven in number — all these I will make perjure themselves: damned I will not be myself: but damned shall be these my brethren. If the word damned be *not* the proper one, substitute, ye who object to it, substitute that which *is*.

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Ye — if after this exposure any such there be — ye who, persisting in the application made of the ceremony: in the application made of it, in any case, and in the case of jurymen's oaths in particular, — do really believe, that, for every instance of perjury, a punishment over and above that for simple mendacity, will in the life to come be suffered by the delinquent — think of the magnitude of the evil, which you are endeavouring to perpetuate! Take balance in hand, and say — whether, by the application thus made of the ceremony, it is in the nature of the case, that good, in any such quantity as to outweigh the evil, should be produced.

Take any man by whom, in any instance, this perjury has been committed: either he believes that punishment in the life to come will attach upon him, or he does not: if not, then is the oath in its professed character, in the instance in question, completely ineffective: if he does, think then of the suffering which it produces. Inefficient or mischievous (and who can say to what a degree mischievous?) such is the alternative.

Now for the benefit from this unanimity: meaning the benefit — if not to the creators, to the preservers and promoters.

To entertain any such opinion, as that, by pain, unanimity of real opinion, on the part of every or any twelve men is actually produced, may be or not be in the power of human folly. But to produce the desire and the endeavour to *cause* this same opinion to be entertained, is but too much in the power, and too abundantly in the practice of human knavery. To the existing system of English-bred jury law in general, and to this part of it in particular, continues to be ascribed this miracle. Then comes the practical use. A system by which such miracles are at all times wrought, and these miracles such delightful ones, — how impossible is it to change it for the better! how dangerous to meddle with it!

In so conspicuous a part as this, no change in the English-bred judiciary procedure system could be so made or attempted, without drawing the public eye upon the whole of it: but, let but the public eye pervade the whole of it, behold, it falls to pieces.

Such of Judge and Co. was the end in view, and such to Judge and Co. has been the use. Such moreover it will continue to be, so long as jurors shall continue to be made of clay, and judges the potters working it. But under their hands, thanks to their carelessness, it has grown and continues to grow stiffer and stiffer. While teaching these their pupils thus to contemn the law, these sages have themselves fallen to such a degree into contempt, that the scholars themselves have at length begun to contemn their own teachers. Every day is this contempt increasing: and if so it be, that contempt of a bad system is necessary to the substitution of a good one, a more beneficial result than these two conjoined, cannot be wished for.

Thanks to this carelessness? Yes: for it is by arbitrary power above, that the arbitrary power below, superior on many occasions to that of its creator, has as hath been seen been created. By arbitrary power in one quarter or the other, thus it is that everything is done: in both, the law is trampled upon. Of the mixture of oaths, perjury, and torture, this is one effect therefore of the oaths.

Blind and speechless acquiescence, under an absurd tyranny, being the result, by what process of reasoning were the inventors led to expect it? Answer — By the following: On each occasion, the portion of law, to which the jury are called upon to join in giving execution and effect, being supposed beneficial, — as for the purpose of the argument it cannot but be, one thing desirable is, of course, that, in the instance in question, and by means of the verdict pronounced, execution and effect should be accordingly given to it. But, at the same time, another thing alike desirable is, that *that* same desirable effect being produced, it shall, by the people at large, be believed to be so.

This desirable belief, if produced, in what way then will it be produced? In this way. In the body of men thus selected, the people at large behold their own representatives, and moreover their own reporters. Better ground for their persuasion than the report made by these their reporters, they cannot have. On the occasion in question, they (the people) have not themselves had the means of informing themselves: these, their representatives and reporters, *have*.

Now then, how to make the people believe that, on every occasion on which a petty jury is employed, everything is thus as it should be? Such was the problem. The solution, this: On this, as on any other occasion, take any considerable number of unobjectionable persons for judges, — the larger the portion of those who agree in the same opinion, the greater is found by experience the probability of their being in the right: thence it is, that, on every occasion, in the majority of such men, the confidence is greater than in the minority. Still, however, remains this same minority by which, in proportion to its number, this so desirable confidence is diminished, and prevented from being entire. Now then, let but this troublesome obstacle be entirely done away, entire is thereby rendered this so desirable confidence. Well then — apply the torture, the minority vanishes.

Another feature belonging to jury-trial is the secresy of which the retiring chamber is the scene. But, not belonging to the subject of oaths, this feature belongs not to the present purpose.

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Would but the mendacity content them, this they might have without the oath: without the oath, the torture would give it them at least as surely as with. But, for such important purposes as above, this same instrument of imposition was needed: and on the same occasion in particular, to make men by the terrific appearance shut their eyes, and prevent them from seeing into the absurdity of the contrivance.

In the shape of an exception, allusion has been made to one good effect of the power of conquest thus given to the strongest of the twelve wills. The good effect is this. A law (suppose) has place, by which, were execution and effect given to it, maleficence would be infused into the whole frame of government: absolutism, for example, with all its attendant miseries. Individuals at the same time are not altogether wanting, each of whom, if, in his capacity of juryman, the law in question were brought before him for execution, would oppose to it this irresistible will, would in a word apply his *veto* to it. By the king and the lords, this veto is applicable to the laws in the first stage of their progress — the stage of legislation: by juries, in the last stage — the stage of judicature.

In the case of offences styled *political*, and in these perhaps alone, is its usefulness indispensable, as it is concentrative: meaning, by political offences, those by which the effective power of the functionaries exercising in chief the powers of government, is struck at: treason, for example, sedition, and political defamation: meaning, in this last case, acts striking at the reputation of men in official situations, considered as such, in which class of cases, constituting as it does the main, not to say sole security against absolutism, rather than part with it, better it were to endure much more than the evil of it in all other cases.

That by the fear of punishment at the hands of the Almighty, scarcely endurance to the amount of two days has ever been produced, is indeed matter of demonstration: since, as above observed, to that amount, in no instance whatsoever, has the effect been produced at any time.

But that, in instances relatively not unfrequent, by sympathy for the happiness of the community at large, corroborated by antipathy towards men regarded as acting in hostility to it, instances of endurance such as have actually been productive of this good effect, there seems reason sufficient to believe to have had place.

To this generous self-devotion does the country appear to be altogether indebted for such portion of actual though unsanctioned and ever precarious liberty, sole security for all other salutary liberties the press is in possession of.

That but to too great an extent the abovementioned disastrous supposition stands verified, is but too undeniable. Under the existing system, take away this irregular power of the jury, neither are laws wanting, nor power conjoined with will, to give execution and effect to them, sufficient to convert the form of government, such as it is, into as perfect an absolutism as anybody could desire.

Determined instruments of absolutism, — and, as such, with scarce an exception, determined and inexorable enemies of the press, have at all times been — all English judges: accordingly, on every occasion of a prosecution for a so-called libel, in which censure in any shape has been applied to the conduct of any public functionary, in that same proportion has been the constancy of the directions given by them to juries, to pronounce for their verdict the word *guilty*. Yet every now and then has an English jury refused to render itself in another sense *guilty*, by the utterance of that same momentous word.

Now then, admitting the effect to be good, in what way—by what *means*—has this same determined will been productive of it? By contributing to give execution and effect to the body of the law? No; but by successful obstruction and frustration applied to it.

Accordingly, in this instance is it any part of our prayer that the torture, thus applied, should be taken off? No; but that so long as the form of government continues what it is, it should be continued.

One set of cases there is, in which the real, or what comes to the same thing, the supposed interest of the ruling few, is in a state of but too decided opposition to that of the subject many; and to the whole extent of these cases, our prayer is, that this same state of things, anarchical as it is, may continue unimpaired.

Thus much for elucidation: to make out any catalogue of these cases, belongs not to this place.

Will it be said, that in some of these cases it is to the direction of the judge, and not to the evidence, that the verdict has been in opposition? Perhaps so. But, at any rate, neither are cases wanting, in which, with the salutary view in question, verdicts have been given by jurors in the very teeth of evidence. Upon their continuing prepared upon occasion so to do, depends, so to us it appears, all possibility of escape from the jaws of absolutism.

Not that we are not fully sensible that, in various particulars, the power of the jury is, in the nature of the institution, of essential, not to say indispensable, service to justice; in particular, in respect of the obligation it lays the judge under, of giving reasons for his conduct, and bestowing on the question the degree of attention necessary for that

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purpose; as also, the furnishing to him such information respecting various grounds for it, as he could not otherwise be in possession of. But, as an ultimate test of truth, that the least should possess a better chance than the most exercised and instructed judgment, of being the most apt, is a notion which we do not feel it in our power to embrace. But on the subject of juries, more will be to be said under another head.

VI. *Device the Sixth—Delay, in groundless and boundless lengths, established.*

Delay (need it be said) is denial, while it lasts. One third of the year, justice, pretended, as above, to be administered: the two other thirds, not so much as pretended. Such was the state of things determined upon, and produced accordingly.

A calculation was made: one third of the year was found to suffice for getting into the law granary all the grist that the country could supply it with; that was the time for the mill to go: remained the two other thirds on which the miller was free to amuse himself. "One third of the year," said he, "will suffice for getting in all the money that the whole people can muster for laying out in our shops: work for one third of the year, amusement for the two other thirds." Sittings out of term time belonged not to those days. At the present day, while some judges, as far as gout will let them, sit at ease, other judges overwork and overfatten themselves. But so managed is the work, that the delay, with its profits and its miseries, continues undiminished. Moreover, by the delay was left a correspondent interval for incidents capable of being made productive of fresh fees.

What is the day on which justice ought to sleep?—what the hour? That on which injustice does so too.

Look now to other departments; see how things would go on if like delay were there: What if, during one part of the year, taxes being collected, during the other two thirds they were left uncollected?

What if, during one third of the year, the naval force being on duty, during the other two thirds the seas were left open to enemies and pirates?

What if, during one third of the year, the army being on duty, the other two thirds the country were left undefended, while enemies were at the work of plunderage and devastation?

From internal enemies, for want of justice, the sufferings of the people would not be so great as from external enemies for want of defence. True; but a suffering's not being the greatest possible, was no reason why men should be subjected to it. How came it that, in those days, while men were guarded in some sort against sufferings at the hands of external, they were subjected to it at the hands of internal evil-doers? Answer—By the suffering produced by the foreign adversaries these judges would themselves have been sufferers. By the sufferings produced by the domestic adversaries they were gainers.

Look now to professions.

What if, on being called in by a man with a stone in his bladder, a surgeon were to say to him, "Lie there and suffer while I am amusing myself: four months hence I may perhaps come and cut you." By surgeons this is not said. No surgeon has a monopoly of surgery. Judges do say this. Judges, in small numbers, have among them the monopoly of the commodity sold under the name of *justice*.

In the eyes of Blackstone, all this evil is so much good. First, because it was done so early in the good old times. But, above all, because it was done by lawyers. To a husbandman, during harvest time, attendance in a court, he observed, would have been attended with inconvenience. True: and this was one reason why, instead of two or three hundred miles, he should have had but ten or twelve miles to travel ere he reached it. Attendance to get back a farming stock unjustly taken, would have been inconvenient. True: but leaving it in the hands of the depredator, and thus leaving the harvest to rot in the ground, was still more inconvenient. So much for harvest time. But all the year is not harvest time, and the whole remainder of the year had its judge's sabbaths as well as harvest time: sabbaths, not of days, but of months continuance.

What the people *now* suffer from the system of delay thus organized,—what the judges now get by it, belongs not in strictness to the present head. But neither is it without claim to notice.

Chiefly to the cases called *civil* applies what is above. Now for cases called *penal*. Behold here the interest of judges changing, and with it, of course, the provision made by them.

In penal cases, and in particular in those most highly penal, not a day in the year but courts are open to receive complaint: and, complaint made, men complained against, guilty and innocent together, are put into jail. How so? Because, as above observed, judges have bodies, judges have gouts, judges have lives: so also as well as other men, have all those who, in point of interest, are in any particular way connected with them: bodies, goods, and lives, which, but for some such protection, might be wounded, carried off, or destroyed.

When in jail, there they are, guilty and innocent together, from two days to 182, as chance pleases. How so? Because, to judges and those who are in league with judges,

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whether in this case a man is innocent or guilty—stays in jail two days or 182 days, makes no difference: not to speak of counties and cases in which the 182 days may be doubled.

Oh yes: to Judge and Co. the time does make a difference: for, from the difference between the two days and the 182 days, come fees. Jail produces bailing, and bailing produces fees. Innocent or guilty, those who can find bail and fees, are let out: those who are too poor to find either, stay in. How can it be otherwise? Under English judge-made law, the only unpardonable crime is poverty.

Contamination! contamination! Between uncompleted examination and definitive trial, whole days, weeks, and months, are rolling on: contamination thickening all the while. Complaints of this evil not sparing: not least abundant by this or that one, of those by whom it is caused. He, who can remove the evil, and does not, causes, if not the commencement, at any rate the continuance of it. Of such contaminators, the most insensible, the most obdurate, the most inexorable, the most inexcusable, are they not legislators?

All contamination in prisons—all unintended sufferings in prisons—all possibility of escape from prisons,—they might prevent, and they will not. Why will they not? One word, *Panopticon*, explains the mystery. Pitt gave acceptance to it while he lived—gave support to it, such as he was able. Royal vengeance stopped it. Interest, sinister and all-powerful interest, opposed to everything good in proportion as it is good, keeps it still out of existence. A little while, and the inventors will, both of them, have the merit of being dead: when their eyes cannot be rejoiced at the sight of it, then will it rise from under the oppression which has thus long kept it down: then will the public eye open itself: then will public indignation kindle; then will the public voice break out afresh, and resistance no longer be deemed compatible with prudence. To conclude—Delay gave ease: delay bred incidents: incidents were made to breed fees: so it must have been in those early times: so it is in these present times. Ease and fees—fruits so sweet, both together from one plant: how felicitous!

Two causes there are, by either of which, without blame in any shape to anything or anybody—to a judge, or to the system of procedure—delay, to any amount, may be necessitated.

Of these causes, those whose interest is served by the delay, and by the system in which it is an inseparable ingredient, take of course their advantage, and do what depends upon them towards making the people believe that the existing delay is alike necessary in the cases to which these causes do not apply, as in those in which they do.

1. One is, non-forthcomingness of evidence: of this cause, the influence, it is manifest, extends itself to every case, to every species of suit.

2. The other is *complication*: complicatedness of the subject-matter or other circumstances belonging to the suit. This applies not beyond a particular class of suits: but, in the nature of things, this is unavoidably but too extensive. Subject-matter (suppose) a mass of property: in the course of the suit, operations to be performed on it, collection and distribution of the component parts of that same mass: as in the case of the disposal made of the effects of a person lately deceased, or of a person in a state of insolvency. Over what parts of the globe may it not happen to the subject-matter, on the one hand, to both debtors and sharers in the balance, if any, on the other, to be dispersed? So likewise where, without death, on suspicion of insolvency, demand is made of an account, by a party to transactions to which it may happen to have been not less complicated than the above.

In a country cause, by this or that accident—absence, for example, of a material witness—trial, without loss of cause to the party in the right, is at that moment rendered impossible. What is the consequence? The cause goes off for six months: expense of witnesses, counsel, attorneys, all disbursed in waste: and at the end of the six months, if it happens to it to be on the *remanet* list, for another six months—unless the party is ruined by the preparation for the first trial, profit to Judge and Co. upon the second, and perhaps upon a third. Necessary or not, motion for a new trial, with additional profit thereupon, according to circumstances.

Suppose now the court sitting all the year round: the accident of one day may now be repaired the next.

Of further particulars as to the evil and causes of delay, mention will require to be made under the head of *Jurisdiction Split*.

VII. *Device the Seventh—Precipitation Necessitated.*

Under the fee-gathering system, states of things the most opposite—delay and precipitation—concur in giving existence to the desired effect.

Of delay, the mode of establishment and the relative usefulness have just been seen. The precipitation grew by degrees out of the delay. At the early period in question, scarcely could it have been contemplated: not but that from the first, precipitation, with its evils, were among the natural effects of the opposite abuse. But at present it flourishes, and on each occasion produces its fruits: and only for the purpose of the present time is the

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state of the system at that early period here brought to view.

Be the business what it may, if, of the time that might and should have been allotted to it, a portion is kept unemployed, proportioned to the increase given to the quantity of the business will be whatever hurry takes place in the course of the time which the business is allowed to occupy.

Suits at common law, and as such brought for trial, or pretended so to be brought before a jury, may be divided into two classes: those of which it is known that, by possibility, they may be tried by a jury, and those of which it is known that they can not.

Cause of incapacity of being brought under the cognizance of a jury, complexity. Of modes of complexity capable of producing this effect, examples are the following: —

1. Multitude of facts which, by one and the same demand or defence are undertaken to be proved or disproved on one or both sides: for example, in an account.

2. Multitude of witnesses liable to be examined in relation to each alleged fact: especially if *alibi* evidence, or evidence as to character, is received.

These sources, however, are but two of a multitude of distinguishable sources, out of which complexity is in use to arise.

Suit called on, jury in box, the impossibility of trial is universally recognised. What follows? Off the suit goes to arbitration. Aptly learned and well-wigged gentlemen in plenty, there they sit, all known as such by the judge. Choice is made of one for each side, or the same for both. Now again comes the time for delay. Five guineas a-day, or less, secures and maximizes it: exemplary are then the care and deliberation. For securing the whole of the mass of evidence which the case affords, the powers are not now altogether adequate. But neither would they have been found so, had the trial gone on: for under the existing system, no assemblage of powers, adequate to the purpose, has place anywhere.

Setting aside this deficiency and premium for delay, here may be seen the natural mode of procedure. Supposing the judge but one, with an audience sufficient in quality and quantity to compose a bridle for his discretion, and he salaried instead of fee'd, here would everything be as it should be. But the misfortune is — that, instead of being substituted to the elsewhere established technical mode of procedure, the natural mode is here added to it, leaving the burthen unalleviated.

So much for all jury causes taken together. Enter now the topographical distinction — *country* causes and *town* causes. The country outweighing the town causes in the scientific *mixture* of delay and precipitation.

Country causes are dispatched post haste: the whole machinery running round in a circuit. At each assize, — upon the blind fixation principle (of which presently,) — allotment made of a certain number of days: — two, three, or four, as the case may be: business, for which two or three hours might have been more than sufficient, or two or three months less than sufficient, crammed into the compass of those same two or three days. By leaving evidence unheard, arguments undelivered or unattended to, — one part, of the whole number of suits set down for trial, is now made to undergo that process: the other part remain unheard, and are called *remanets* or *remanents*. Six months is the shortest interval before they come upon the carpet a second time; that is to say, if come they do: for, various are the causes, by any of which they may be extinguished: deperition of evidence, drainage of purse, death: death, in a certain case, whether natural or no, not the less violent because lingering: offence, manslaughter (to say no worse): manslaughter by Judge and Co. with their delay, expense, and vexation: substitutes — how safe, convenient, and profitable! — to poison, sword, and dagger.

Remanets increase and multiply. Begotten by the remanets of spring, are the remanets of Michaelmas.

Eminently instructive would be a regularly published list of all of them.

Now as to *town* causes. Here the scene changes. Of delay, considerably less: thence, so of precipitation. For trials, in the whole of England, with the exception of the metropolis, assizes in the year no more than two; in some counties, no more than one. In the metropolis, *terms* four: with sittings before, in, and after each: total, twelve: and in each of the twelve, upon an average, more days than in an assize. Under these circumstances, in the metropolis, may be seen a choice made: not made by one Hercules, but by two of them. The one who has fewest causes gets most ease: the one who has most causes gets most fees. Health suffers: and martyrdom to duty is the name given to canine appetite for fees. Velocity in horsemanship sees itself rivalled by velocity in judicature.

Mark now how admirably well adapted is this compound of delay and precipitation to the ends of judicature. Carried on to the last link through the chain of useless proceedings, has been the corresponding chain of fees: so much for *fees*. Pending, the suit may have been for years, not a syllable all the while suffered to present itself to the mind of a judge, such is the fruit of the *mechanical* mode of judicature (of which presently) substituted to the *rational*: so much for ease. Then comes the agreeable circumstance of making recommendation of the man or men, by whom, though without the name, the functions of

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the judge are then to be performed: so much for *patronage*.

The boots that fitted all legs — the *seven-leagued* boots — may be seen in fable. The judicial establishment which, should parliament so please, would fit itself to all quantities of business, may be seen, as below, in sober truth. *Deputation* is the name of the instrument, by which this quality would be given to it. *Powers of deputation* is the name given to the so highly elastic and self-accommodating boots.

VIII. *Device the Eighth — Blind Fixation of Times for Judicial Operations.*

Where flexibility is necessary, fixation made. Example — most prominent, effective, and instructive — that which is afforded by the appointment of days for attendance at the judgment seat: attendance of parties, or witnesses, or both.

Commencement (suppose) given to the suit, — as, in every case, it might and should be — by application, made by some person in quality of suitor, or, in case of necessity, by some substitute of his, at the sitting of the judge. Where a suit is intended (simple information without suit being out of the question,) the applicant demanding, that he himself, or some person mentioned by him, be admitted as pursuer against some person as proposed defendant. If, on this first occasion, the suit for the commencement of which the application is thus made, is not dismissed, some day for the continuance of it will of course be to be appointed: some day thereafter, say for example, in ordinary cases, the second, third, or fourth day, as it may happen, distance in place taken into account, reckoning from the day on which the originating application is made. So much as to what should be the practice: now as to what it is. In pursuance of the device here in question — say upon the *blind fixation principle*, the existing system appoints for all cases without distinction some one day by general rule: for each subsequent operation, fifteen days suppose, reckoning from the one last preceding. Blind fixation, say without difficulty: for, blind, when made by a universally and indiscriminately applying rule, such fixation cannot but be.

As to the originating application, — in neither case can in the nature of things any fixed day for it have place. Such application imports actual appearance of a suitor in the presence of the judge. But, applied to the existing system, how erroneous is this conception! For, such is the established etiquette, to no suitor, till the day on which conclusion is to be given to the suit, is his lordship at home. What then is the mode by which commencement is given to it? Answer, this: By a person acting as an attorney for the plaintiff, the appropriate instrument, *the writ* (as the phrase is,) is *taken out:* in plain English, bought at the justice shop of a clerk, employed by the judge, in serving out the commodity to every one who will pay for it, no question asked. The writ itself is a mass of unintelligible absurdity: but the result is, that if the proposed defendant does not constitute himself such by appointing an attorney to act for him in the correspondent manner, the judge will, at his charge, cause the plaintiff to have whatever it is that he demands.

In regard to defendants, setting aside for the present the question as to witnesses, co-pursuers, and co-defendants, what is clear is, that, sooner or later, to each proposed defendant the faculty ought to be afforded of acting, if so disposed, in contestation of the demand made at his charge, by the individual admitted as pursuer. But to his so acting, a necessary condition is, that he should have received notice of his being called upon so to act. To his being so, another condition necessary is, that a mandate for the purpose should have been delivered at some individual spot, which, at that same moment, is the place of his abode

Now then, as to this same abode, it may be within a stone's throw of the justice-chamber, or without, being out of the local jurisdiction of the court, at about three hundred miles distance, more or less. In the first case, supposing the defendant at home, and the judge at home, and disposed to hear him, two or three minutes would suffice for the production of the necessary intercourse, *i. e.* the interview between him and the judge in the chamber of justice; in the other case, twice as many *days* would not suffice. What, on an occasion of this sort, does judicial practice? It appoints one and the same day for every individual defendant; no regard paid to distance in place or quantity of time necessary to be expended in passing from the one place to the other.

So much for the *operation*, — the operation of attending, or, as the word is, *appearing*. Now for instruments. Where all that is to be done at the appointed day is appearance in a chamber mentioned, short in comparison is the interval that may suffice for adequate notice: and such and no other was the state of things at the primeval period all along in view. But where, within the appointed interval, an ulterior operation comes to be performed, that operation consisting in the drawing up and exhibition of a written instrument of a certain sort; in a word, say one of the sort of *written* instruments above spoken of by the name of *written pleadings;* widely different now is the aspect of the case: the time requisite may, upon a scale of indefinite length, be varied by the quantity of writing necessary, not to speak of an unconjecturable variety of other circumstances. And thus it is, that in

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this case, so it may be that by the next day may be afforded notice long enough, or by the next day two months, notice not long enough. Against the notice's being neither too long nor not long enough, the chances, it is evident, are, so to speak, as infinity to one.

Of the individual in whose instance attendance is requisite to be paid, or some other operation performed, — some instrument already in existence and established, or some written instrument, not already in existence, to be framed, and thereupon exhibited, the residence is, as above, *supposed* to be within the jurisdiction of the court. But, on the other hand, it may, in fact, be in another hemisphere; and so it frequently is. No matter, the day is fixed, — fixed by the general rule: fifteen days (suppose) are given for a proposed witness, with his evidence, to make his appearance from British India, or Australia, or Peru.

Such, then, under the direction of this blind fixation principle, is the practice throughout the whole of the existing system of the technical judicature. It was the natural, and, in a manner, the necessary result of the virtual and effective exclusion which, at the primeval period all along in question, by the exclusive use of a language foreign to them, was put upon the parties.

Of this same blindness, behold now the consequences: for in these consequences may be seen the *motive*,—the motive, by the operation of which the eyes were at that time shut, and to this day continue to be shut. In each of the two opposite events, disservice is rendered to the interest of justice, correspondent service to the interests of judicature.

The time allowed, is it too long? If yes, then by the overlength is created so much needless delay; and of evil in that shape, the consequences have been already brought to view. Is it too short? Then comes a demand for the enlargement of it; and with this demand comes down a shower of *fees*.

A *motion* requires to be made: a motion having, in a common-law court, commonly for its support, some alleged fact, or set of facts, with an affidavit or set of affidavits, by which allegation of their existence is made; and of this motion, the ground made is here, by the supposition, in point of reason, incontestible. But it follows not that, in point of fact, it will not be contested. From the motion have, at any rate, come some fees; and from the contestation, if any, will come many more fees.

Every motion made is, in fact, a suit within a suit; and of the thus needlessly interpolated suit, the expense is abundantly greater than under a system having for its ends the ends of justice, would, in the vast majority of cases, be the whole of the needful expense.

By *motion*, understand here a motion which is *not* of course. For motions are divided into *motions of course*, and *motions at large*, or say *not* of course. Of the mention thus made of the distinction, the object is, that notice may thereby be received by the Honourable House that every sum obtained for making a motion of course, is money obtained from the suitors by extortion, practised on false pretences, no motion being really made: sharers in the produce of the extortion, the attorney, the advocate, the subordinate judicial officers, and the judge.

Of this contrivance for the manufacture of motions, — mark well the absurdity, in any other character than that of the manufacture of fees. If in judicature this is right, let it now be applied to legislature, and observe the consequences. Except where the appropriate facts are deemed of themselves sufficiently notorious, no operation is ever performed by the Honourable House, no proceeding carried for which a determinate ground has not been made by special evidence. By your Honourable House, either in the whole House, or in and by its committees, according to the occasion and the purpose, evidence is convened from every part of the island, and upon occasion from every part of the globe. Now then, for argument's sake, suppose (what in reality is not possible) — suppose an honourable member to stand up and make a motion, that, on every occasion on which any person is ordered to be in attendance at the House, for the purpose of being examined, the day of attendance shall be on a day certain, and in every instance one and the same: say, for example, the fifteenth day, reckoning from that on which the motion shall have been made. A motion made to any such effect, — would it not be regarded as evidence of mental derangement, and that but too conclusive? Yet in judicature this is no more than what has all along been the practice; and till this moment without objection by all judges, professing at the same time to be directing their practice to the ends of justice.

But justification will perhaps be attempted: and if it be, imagination will be set to work for the creation of it: process, fallacy: result, in so far as successful, illusion and deception. Principal instruments of the fallacy, the words *irregularity* and *regularity*.

The mode in which they have acquired this recommendatory property seems to be this: With the word *irregularity*, sentiments of disapprobation have from the earliest time of life stood associated: at school, irregularity has betrayed itself by straying out of bounds: at a later period, by purchase of present pleasure at the expense of greater good in future contingency. Irregularity is therefore a bad thing; and, as such, attended with bad consequences. But bad consequences ought to be prevented; and to this end, whatever opera-

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tion is chargeable with irregularity ought to be set aside, and to this purpose considered as not having been performed; whence the motion for "setting aside proceedings" (as the phrase is) for irregularity.

But of irregularity, regularity is the opposite: irregularity being a bad thing, regularity is in a proportionable degree a good thing, and whatsoever is good, ought to have place everywhere. Apply it accordingly to judicial procedure: whatever operation requires to be performed, a day *certain* ought to be fixed for the performance of it: and intimate is the connexion between regularity and certainty; and as fixation is the mother or daughter, no matter which, of regularity, so is she of certainty.

In proportion as the interval is too short, and thence the existence of motions for enlargement more certain, the rule receives the praise of *strictness:* for strictness is regularity, in a transcendent degree, or say in perfection. Accordingly, equity practice teems with rules of this kind — (say *time-fixation rules)* — compliance with which is notoriously and confessedly impossible.

Rule — is it a good thing? Yes, in so far as directed, and with success, to a right object: no, if directed to a wrong object: no, even if laid down without an object: for, on the field of law, all rule imports *coercion:* and, taken by itself, coercion is evil, and that evil pure. Now then, the rules in question — what are they? To outward appearance, nothing worse than rules without an object: but in inward nature and design, rules with a bad object: rules laid down for a bad purpose; for the purpose of producing by extension, under colour of justice, the object of the all-ruling passion — fees.

IX. *Device the Ninth—Mechanical substituted to Mental Judicature.*

Of the arrangement by which the parties, and in particular the first applying party, the plaintiff, was excluded from the presence of the judge, this was an immediate result, as well as an intended fruit. Already, in the blind-fixation device, may be seen part and parcel of it: a peg or a nail driven into a board, is the prototype of a day fixed.

How to cause the suit to be carried on down to the last stage without the judge's knowing anything of the matter: this was the problem to be solved, and solved it was: fruit of the contrivance, profit gained: all trouble, all time, all labour, all responsibility, saved.

By the parties in conjunction, that is to say, not the parties, but their respective agents, with the judge's subordinates, all impregnated with interests repugnant to the interests of parties, everything requisite to be done was to be done: agent fighting against agent, with arms respectively bought by them at the shop kept by the judge for the purpose.

Mechanical this mode may truly be styled, in opposition to mental: of no such faculty as those the aggregate of which is termed *mind*, any application being at any part of the time made by him: irrational and non-rational are terms that fall short of the monstrosity of it.

A cider-press, worked by steam, is the emblem of a judicatory, acting in pursuance of this device. By the press, with its moving power, the juice is squeezed out of apples: by judges, and by means of the machinery of which their predecessors were the inventors, and themselves the preservers and improvers, the money, in the shape of fees, is squeezed out of suitors. By the piston, no thought is applied either to the apples or to the sweets extracted from them. By the judge as little, to the operations performed and instruments exhibited under the authority of his name, or to the effects of them on the suitors: not so as to the *sweets:* little are they in danger of being out of mind.

An attorney, along with a fee, puts a written paper into a box, the judge knowing nothing about the matter. This done, into the same or another box, another fee is dropped, with another written paper, of which the judge has the same knowledge.

By each fee, the agent on one side purchases of the judge the faculty and benefit of plundering, impoverishing, and vexing at the same time his own client, and the suitor on the other side; whereupon, the agent of the party on the other side does the like: and thus the compliment, as the phrase is, is returned.

For elucidation follows an example: that of *signing judgment:* by this one, all others may be rendered needless. "I have signed judgment," says somebody: who, would it be supposed, is this somebody? A judge? no, but an attorney: the attorney of one of the parties. What! — is not, then, the judge the person by whom the act of signature is performed? Not he indeed: but the attorney is he by whom alone any thought is applied to the subject, any *judgment* exercised; the judge signs nothing: a clerk under the judge signs what is given him to sign as above. Under the fixation system, as above, a day has been fixed for the attorney of the party, say the defendant, to do something: say, to send in some written instrument, on pain of loss of cause. The day passed, the attorney takes to the proper officer the instrument styled *the judgment*, and so, as above, a clerk of the judge puts his signature to it.

The problem has been already mentioned. The result aimed at in the first instance is judicature without thought. In so far as this is effected, the solution is complete; in so far as this is unattainable, next comes judicature with the minimum of thought: in this case, an approximation is all that lies within the power of art and science.

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Of the case in which the solution is complete, that in which a clerk's is the hand by which the judgment is signed, is an example: the judge whose name has been written by him on a piece of paper or parchment knows no more about the matter than his learned brother who is sitting at the same time upon the Calcutta bench.

At all times, of the whole number of actions commenced, a great majority would probably be found thus disposed of. For such will be the case, where the so styled defendant, being by indigence disabled from becoming so in reality, sits helpless while the suit is taking the course which the mechanism has pre-established.

As to his property, instead of going in proportionable shares among his creditors, it is in the first instance, by Judge and Co. divided, if not the whole of it, always a large part of it, among themselves.

Creditors are made to abate from their demands: Judge and Co. know not what it is to make abatement.

One little improvement remains to be made: substitution of an automaton to the judge. Written by a penman of this sort have been seen lines more beautiful than were ever written by a judge. Of the essential characteristic of English judicature, the grand instrument of delusion — the masquerade dress — this deputy would not be left destitute. Bowels, if given to him, would be but surplusage: if his principal had had any, he would not have been where he is.

Suppose now a system of procedure under which everything was done by the appearance of the parties in the presence of each other, before an unfee-fed judge. Creditors more than one — *equitable adjustment*, as the phrase is, would have place: equitable adjustment, without that injustice for which this phrase has too often been made a mask: for the reducing, on both sides taken together, the burthen to its minimum, the arrangements requisite would be made. To the debtor respite might be granted, where, to both interests taken together, the grant were deemed more beneficial than the denial of it. Respite to the debtor is, indeed, so much delay to the creditor; but delay to the one may be a less evil than ruin to the other.

Where, besides the creditor by whom the demand has been made, other creditors remained unsatisfied, all of them being called in, a *composition* would be made among them, they appearing in person, as far as needful, under the direction of the judge: the effects would be divided among those to whom the shares were due, instead of a fellowship, consisting of attorneys, counsel, bankruptcy commissioners, judiciary functionaries of various sorts, and their universal patron, by whom the seals are put to the universal system of plunderage.

X. *Device the Tenth — Mischievous Transference and Bandying of Suits.*

When justice is the object, cases of necessity excepted, in whatsoever judicatory a suit is begun, in that same is it continued and ended.

Where fees are the object, it is without any such necessity or use, transferred of course, from one judicatory to another: where, after transference, it does *not* return to the judicatory from whence it went, say *transference*; where it *does* return, say *bandying*.

Appeal is not here in question. In case of appeal, a suit is not, without special cause, sent off from one judicatory to another: in the case here in question, it is without any cause.

Instances of cases in which justice is the object, are afforded by one of the two classes of the cases in which jurisdiction is given to justices of the peace, acting singly.

Preparatory and *definitive* — by these two appellatives let them be distinguished: *preparatory*, where, from the judicatory in which it originated, a suit, to receive its termination, must be transferred to some other: *definitive*, when it is in the originating judicatory that the suit is not only begun, but continued and ended. To the class of cases in which the jurisdiction is definitive belong those in which justice is the object.

In the preservation of the practice, not in the invention and creation of it, consists, in this case, the device.

First, as to the simple transference. In the case in which the jurisdiction of a justice of the peace is of the preparatory kind, — from his judicatory, according to the place in which the suit originates, the nature of the case, and the gravity of the punishment, it is transferred to one of four others.

1. If in London and Middlesex, in the grave cases, to the Old Bailey.

2. If in the country, in these same cases, as also in the lighter ones, to the assizes.

3. In the metropolis, as above, in some cases to the assizes, in others to the general sessions of the justices of the peace.

4. In the metropolis, in the lightest cases, to the sittings before, in and after, term in the King's Bench.

In its way to each of these ultimate or penultimate judicatories, if it has arrived at its destination, it has been strained through that seat and instrument of secresy, partiality, and irresponsible despotism, the grand jury.

Evidence, time, and money: of all these valuable articles, loss, in vast and incalculable abundance, is the consequence.

In all these instances, the case is, in one degree or other, a penal one.

For a faint conception of all these losses, and of the useless and mischievous complication by which they are effected, take now

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that state of things which, in respect of the evidence, is most simple, and which, at the same time, is not unfrequently exemplified.

Percipient witness to the transaction, but one: circumstantial evidence, none. Suppose the originating judicatory aptly constituted, and appeal allowed; what, in this case, should hinder the suit from being ended where it began?

A duty that might be imposed on the judge, as upon the justice of peace it is imposed, — is that of causing to be set down every syllable of the evidence. This done, why should it not be made thereupon his duty to pronounce judgment, and in case of conviction, give execution and effect to it? What (says somebody) if death were the consequence? Answer — O yes: though death were the consequence: provided always, that, in every case, appeal were allowed: appeal to a judge with jury, in cases to which the powers of a jury were deemed applicable.

Is this the course? No. From the justice of the peace it must go to a grand jury; from the grand jury, if not sunk in that dark pit, it must go to one or other of the four judicatories above mentioned.

Three times over must the tale of this percipient and narrating witness be told. Here, then, in every case, is the labour, expense, and complication of two appeals, without the benefit of one. Were appeal instituted, it would no otherwise be allowed than upon grounds deemed sufficient, and in so far as it was deemed subservient to justice, say, in one word, of *use*. On the other hand, under the existing system, there is the complication of appeal organised and established in all cases, including those in which the operation is without ground, and without use.

Were the matter of the first narrative preserved, it might serve as a check and a security for the correctness of the second: and so the first and a second for the correctness of the third. No: neither of the second nor of the first is such use, or any use, made.

Moreover, for deperition of the evidence by design or accident, — by purchase, emigration, sickness, or death, all this time, all these chances, are allowed.

I. Here then is loss the first: loss of *evidence*.

II. Now for loss of *time*: —

I. Old Bailey. In the year, sessions 8. Average duration of each session, days 10. time lost, days, from 1 to .

II. King's Bench. Terms 4: sittings, before, in, and after term, as many. Times of trial, these same sittings. Time thereby lost, days, from 1 to .

III. Assizes. In the year, days of sitting in most counties, 2: in some, but one: in each town, from 1 to 3: days lost, from 1 to 182: in some cases, no less than 364.

IV. General sessions of the justices of the peace. In the year, sittings 4. Times of trial, these same sittings, days of sitting, upon an average. : Time lost, days from 1 to .

III. Now for loss in *money*: Only for remembrance sake can this item be set down: to determination it bids defiance.

So as to the loss in the two other abovementioned shapes: from anything that could be done towards filling up the above blanks, the benefit would not pay for the burthen. According to his opportunities, every person, whose regard for human suffering suffices for the motive, will perform the operation for himself.

So much for simple transference: now for *vibration*, or say *bandying*; that is to say — after sending the suit from the originating judicatory to another, regularly bringing it back to the first. Neither was this branch of the device part and parcel of the original system. In process of time, two causes concurred in the production of the effect.

Cause the first: As opulence, and with it the possibility of finding the purchase-money for the chance for justice received increase, the local judicatories being killed, business kept flowing in to greater amount than King's Bench and Common Pleas together knew what to do with, in the compass of that portion of the year, which, under the name of *term-time*, had originally been allotted to it. Cause the second: At the same time, the burthen attached to jury service, borne as it was twice in the year by men in dozens from each county, travelling for King's Bench suits in the train of the king during his rambles, or though it were only to a fixed place, such as London, from Cumberland or Cornwall, was such as, in the aggregate, became intolerable.

Hence came the *circuit* system: that system, by which part of the time, originally under the name of *vacation*, consecrated to idleness, was given up to business, and, to a correspondent amount, *ease* exchanged for *fees*: judges being detached from the Westminster-Hall courts, to save to jurymen a more or less considerable proportion, of the time and money, necessary to be expended on journeys and demurrage.

As to the local judicatories thus extinguished, they sat every day of the 365: at least, nothing was there to hinder these days. Was anything like an adequate equivalent allowed for the 365, by the circuit-system principle, the allotment of a finite and minute quantity of time for an infinite quantity of business? When it is conducive to public health that, by medical men, wounds shall be dressed, teeth drawn, and limbs amputated at full gallop, — the circuit mode of trying causes, at like speed, will be conducive to justice.

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Under the technical system, if ever, in a case such as this, evil receives alleviation, it is from some other evil. It is from the device by which mechanical operation is substituted to mental: it is from this, that the evil produced by the bandying device, by which a suit is dealt with as if it were a shuttlecock, may be seen to receive such palliative as it is susceptible of.

That the series of the proceedings of which a suit is constituted, should be divided between judicatories more than one, is a source of misdecision, for which, in some cases indeed, necessity affords even a justification, but for which nothing short of necessity can afford so much as an excuse. Why? Because in this case, the judge, on whose judgment the fate of the suit depends, has had before him no more than a part of the matter of which the ground of that judgment ought to be composed.

In the case of circuit business, this source of misdecision is purposely established and universalized. In every one of the three common-law courts, in the metropolis it is that the suit takes its commencement, and with it the history of it, called the *record*. When, on the circuit, the detachment of judges, sent from Westminster Hall in couples, make their progress through the counties, with them travel these same records, and so again on their return: whereupon, they are reconveyed to the offices, from whence they issue: of this practice of dealing with a record as with a shuttlecock, what is the use? None whatever: always excepted, the universal use: serving as a pretence for fees: a shuttlecock is lighter than a record, and would, in these cases, be an advantageous substitute to it.

Of the whole proceedings, in each suit the essential part (need it be said?) is the evidence. Well then; of each record this same evidence constituted (one might have supposed) the principal part. Well then; does it compose the principal part? No: nor so much as any part whatever: a mixture of immaterial truth and absurd lies: such is the matter of which the principal part is composed.

As to the evidence, instead of a complete written designation of everything relevant that has been said, traced by a responsible hand, the judge takes or does not take what he calls his notes; which notes are of course, in quality as well as quantity, whatever it pleased him to make them: on a motion for a new trial, but not otherwise, they are read. Now then for the *palliative*. It consists in this: setting aside occurrences, which are purely accidental, and which happily do not take place, — perhaps in one suit out of twenty, — no more than one judge is there, in truth, whose mind is, in any part of the proceedings, applied to the matter of the suit. This is the judge, under whose direction has been performed the elicitation of the evidence.

Auspices were what a Roman emperor contributed and received admiration and praise for, when a victory was gained a thousand miles off: auspices are what the judges of a Westminster-hall judicatory contribute to a suit begun and ended in their courts.

When from the circuit the record is brought back by the judge, under whose direction the evidence has been elicited, to the Westminster-hall court in the office of which the suit and the record took commencement, the form by which judgment is pronounced receives the handwriting of the chief justice, as in his sleep a plate of glass would his breath, without his knowing it; and thereupon, if the judgment be in favour of the plaintiff's side, and money is to be raised in satisfaction of a debt pronounced by the judgment to be due, is sent down ordinarily to the county, to which the record's useless journey had been made, an order called a writ of *fieri facias*, by which a functionary styled the *sheriff* of the county is required to raise the money by sale of the defendant's goods, and remit it to the office of the court in which the suit was commenced.

When it was at Westminster, and thence in the very justice chamber in which the suit took its commencement, that the elicitation of the evidence belonging to it had to be performed, here was no journey for the record to perform: next to none when in the city of London, at less than two miles distance. A trial performed at a county town in the course of a circuit was said to be performed at the assizes: a trial performed in Westminster or London, as above, was said to be performed at nisi prius: *nisi prius*, when interpreted, is *unless before*: and with that interpretation your petitioners choose to leave the matter, rather than attempt to lead the Honourable House through the labyrinth, through which, often, beginning at nonsense, the mind must make its way, ere it arrives at common sense.

But the county at which the elicitation of the evidence is to be performed — what shall that county be? Under the natural system, there would be variety, but without difficulty: without difficulty, because without decision: without decision, because by the judges, unfee-fed as they would be, nothing would be to be got by it.

Under the existing technical system, chicane is busy: difficulty proportionably abundant. Hereupon comes a sort of a thing called a *venue*: Question, shall it be changed or remain unchanged? In plain English, the county in which the trial is performed — shall it be that which, by means of the appropriate gibberish, the plaintiff's attorney had fixed upon for this purpose?

Such is the stuff, out of which, under the technical system, what is called *science* is

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composed. If a suit were sent to be tried at the *venue*, and the motion were for change of *unless before*, the profundity of the science would be rendered still more profound.

One thing is throughout intelligible: At the bottom of everything are fees: at the bottom of the *unless before*, are fees: at the bottom of the changeable *venue* are fees: the greater the quantity of parchment in the shape of a record, the greater the quantity of gold in the shape of fees, the greater the patience of us his Majesty's subjects, the more cruelly will every one of us be trod upon by every dishonest man who is richer than he, and by the men to whom, under the name of judges, we are delivered over to be tormented, the more insatiably squeezed for fees.

Particular case just alluded to, that of a motion for a new trial. Judges of the three Westminster-Hall common-law courts, 12: before one alone it is that the trial has been performed. Two to one, therefore, is the chance that the above-mentioned palliative, such as it is, will not have had place: for, upon the notes taken by the one judge, at the assizes in the county, or *nisi prius* at the metropolis, is grounded the decision of the four judges in Westminster Hall, on the question whether the new trial shall or shall not have place.

Under natural procedure, supposing a new trial, it might, instead of the next quarter or half year, take place the next day; and thus before the witnesses were dispersed.

Let not mistake be made. Absolutely considered, neither on simple transference nor yet on bandying, can condemnation be passed, consistently with justice. Suppose two hundred local judicatories, having each of them in its territory a witness or a party, whose testimony was needful in one and the same suit. On such case, transference to some one, or bandying the suit to and back from each, might perhaps be productive of less delay and expense, than the fetching of them all to the originating judicatory.

The grievance consists in the performance of both operations, conjointly, and as a matter of course, where there is neither need nor use. Sending, for example, on the strength of the word *venue*, suit, parties, witnesses, and record, to Cornwall or Cumberland, when all are within a stone's throw of the seat of ultimate judicature.

XI. *Device the eleventh—Decision on grounds avowedly foreign to the Merits;* or say, Decision otherwise than on the Merits; or, more shortly, Decision not on the Merits.

Under all the devices as yet brought to view, the sinister design has shrunk from observation, and with but too much success sought something of a veil for the concealment of it. But by him, by whom, for the designation of the decision pronounced or sought by him, this phrase was employed, all veils were cast aside, and the principle acted upon, avowed and exposed to all eyes, in all its deformity and foul nakedness. To all eyes? Yes: but these eyes—whose were they? Under one or other of two descriptions they all come: eyes of the sharers in the guilt, with its profit, or eyes—which, by the devices that have been brought to view, they had succeeded in blinding, concealing from them the cause, and the authors, of the suffering they were experiencing all the while. But for this blindness, insurrection would have been universal, the yoke of lawyer-craft shaken off, all the other devices rendered useless, and universal abhorrence, not to speak of condign punishment, the only ultimate fruit reaped from so much ill-spent labour by the authors.

"To decide, sometimes according, sometimes not according to the merit—such has been my habit, such continues my determination." What a profession this for a judge! In what other class of men could any instance of such openly-avowed depravity ever have been found?—in what other part of the official establishment any such avowal of accomplished inaptitude? Look to the military: My design is sometimes to obey my commanding officer, sometimes to disobey him. Look to the financial: My design is sometimes to hand over to the treasury the money I have collected; sometimes to put it into my own pocket. Look to the medical profession: My design is sometimes to cure my patients, sometimes to kill them. In the soldier, the tax-collector, and the surgeon, if such there could be, by whom respectively such language could be held, would be seen the exact parallel of the judge, who avowedly and purposely decides otherwise than according to the merits.

In painting the deformity of this practice, can any power of exaggeration go beyond the plain exposition of the simple truth?

In what instance, on what occasion, did the Honourable House ever profess to make a decision, not in accordance with the merits? On the occasion of any dispute between child and child, between servant and servant, did ever any member of a family, non-lawyer, or even lawyer, ever declare himself thus to decide? The essential word *merits*, being a word over the import of which something of a cloud may on this occasion appear to hang, whatsoever may be necessary we humbly hope will not be regarded as misemployed, while employed in dissipating it.

To have a clear view of the sort of operation meant by a deciding *not according* to the merits, a man must first have a correspondently clear view of the sort of opera-

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tion meant by a deciding *according* to the merits.

Taken in its all-embracing description, a decision *according* to the merits, is in every case a decision by which, on the occasion in question, execution and effect is given to the law: to the really declared will of the legislature in the case of statute law: to the imagined will of the imagined legislature in the case of *common law*, in that sense in which it is synonymous to judge-made law.

In the sort of case called a *civil* case, that which is done by a decision according to the merits, is, giving to the plaintiff the benefit claimed by his demand, if so it be that his individual case is contained in the species of case in which it has been declared by the law that, by every individual, whose case is included in that same species of case, a benefit of the sort so designated shall, on his demand, be put in his possession by the appropriate judge: thus giving to the plaintiff the benefit in question, if his case is within that same species of case, and thereby of necessity subjecting the defendant to the correspondent burthen: refusing the benefit to the plaintiff if his case, as above, is *not* within the species of case, and thereby keeping the defendant clear and exempt from the correspondent burthen.

In the sort of case called a *penal* case, a decision, according to the merits, is a decision by which the defendant, if guilty, is pronounced guilty: if not guilty, not guilty.

On each occasion, two questions, essentially different, how intimately soever connected, come necessarily under consideration: the question of *law* and the question of *fact*. But of this distinction, for the present purpose, nothing further will require to be said. Only that it may be seen not to have been overlooked, is this short mention made of it.

Such being the description of a decision according to the merits, now, in exact contrast to it, comes the description of a decision not according to the merits.

In its general description, as above, a decision according to the merits being a decision by which, on the occasion in question, execution and effect is given to the law: in the case of a decision not according to the merits, on the occasion in question, execution and effect is *not* given to the law.

In a civil case, a decision according to the merits was a decision, by which the plaintiff was put in possession of the benefit in question, as above: a decision not according to the merits, is accordingly a decision, by which, in that same same case, a refusal express or virtual is made, so to put him in possession, as above.

In a penal case, a decision according to the merits, was a decision, by which, if the defendant was guilty, he was pronounced guilty; if not guilty, not guilty: a decision not according to the merits, is accordingly a decision by which, if the defendant was guilty, he is pronounced not guilty; if not guilty, guilty.

Here then are four distinguishable forms of injustice: and by every decision not according to the merits, in some one or more of these forms, is injustice committed.

Moreover, in no other than in one or other of these same four forms, by a judge acting as such, can injustice be committed: into one or more of them will be found resolvable every decision to which, with propriety, injustice, or say, contrariety to justice, can be imputed.

Of the injustice committed by means of this device, the prime instrument is the word *nullification*, with the other words, nouns substantive, nouns adjective, and verbs connected with it, and the phrases in the composition of which they have place: null, void, null and void, bad, error, irregularity, flaw, vacate, avoid, avoidance, quash, set aside, annul, nullify, fatal, quirk, quibble.

Compared with this of nullification, of all other modes put together, in which injustice is capable of being committed by decisions not according to the merits, the importance would be found inconsiderable: the burthen of research and examination would not, on this occasion, be paid for by the benefit of the acquisition.

In the group, composed of these four great aggregates, are united four elementary ingredients, by universal consent acknowledged in the character of so many modifications of injustice; these are punishment *ex-post-facto*, or as some style it, *retro-active* — disappointment of established expectations, complete arbitrariness, mis-seated punishment. Of retro-active punishment, the so flagrant and incontestable injustice is an established and frequently drawn-upon source of condemnation: and this even under statute law, under which it is so rarely inflicted, even by the worst constituted and worst exercised governments.

In the case of judge-made law, this retroactivity is of the very essence of this species of law, as contradistinguished from statute law: and this even when the decision is on the merits.

But, when *not* on the merits, it stands upon ground very different from what it does when on the merits: ground widely different and much worse.

When *on the merits*, there is always some analogy between the state of the case on the occasion of the decision in question, and the state of the case on some anterior decision or decisions, to which reference is made: and those to which the analogy it bears is looked upon as being the closest, are uniformly those which are looked out for in preference. How

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constantly opposite in this respect is the case where the only grounds on which the decision is formed, are such as avowedly have nothing to do with the merits!—bear no analogy whatsoever to the merits!

As to punishment, the name is on this occasion employed, because, whether or no the suffering produced is produced under the name of punishment, such upon the individual who suffers is the effect.

Now as to disappointment. Of an occurrence from which expectation of benefit in any shape experiences disappointment, pain, in some degree or other, is a constantly attached consequence: in the exclusion put upon this pain may be seen the sole but perfectly sufficient immediate reason for giving to every man whatsoever is deemed his own, instead of suffering another to get or keep possession of it. No otherwise than by statute law, and in proportion to the extent of it, can this so desirable exclusion be effected: by statute law pre-established, fore-known and fore-notified. Of judge-made law, the general incapacity of conveying this same so desirable information is the essential and distinctive characteristic. But, on every occasion, as above, even under judge-made law, it is more or less extensively an object of endeavour to confine this sort of uneasy sensation within as narrow bounds as may be; to exclude it altogether, if possible; and at any rate, on each occasion, to render the probability of its having place as small as possible. On the contrary, in the case of a decision not on the merits, the probability of the existence of evil in this shape is at its maximum: in a word, it coincides with certainty. For, unless where, in the individual case in question, corruption, or some uncommon distortion of the intellectual frame, on the part of the judge, is supposed or suspected to have place, by whom is it that the existence of any such phenomenon can naturally be apprehended, as that of a judge so lost to all sense of shame, as to stand forth a self-declared perpetrator of injustice?

Now then, by the practice of deciding on grounds palpably foreign to the merits, has power to this degree arbitrary been actually established in themselves by English judges. In general, they are expected to tread in one another's steps: and in the degree, in which this so indispensable habit is conformed to, depends altogether such feeble and even vacillating degree of security, as it is in the power of judge-made law to afford. But when at length the eyes of the public have to a certain degree opened, the evil which has been the result of their thus treading in one another's steps in some cases of quibble, has become so palpable and grossly mischievous—giving impunity, for example, to murderers, because some word has been miswritten or left unwritten by somebody,—when things have come to this pass, not only allowance but applause has been bestowed on a departure. Then it is that the judge finds himself at perfect liberty to give or to refuse impunity to the murderer, at pleasure: if he refuses it, liberality is his word: if he gives it, *stare decisis*.

Now as to the complete arbitrariness. Arbitrary to a degree of perfection, if in any case, is the power of a judge in a case in which, without danger either of punishment at the hands of the law, or so much as censure at the hands of public opinion, he can give success to plaintiff or to defendant, according as he happens to feel inclined. Such is the case where, within his reach, he sees two opposite sources of decision, from either of which he can draw at pleasure: one which will give success to the plaintiff, the other to the defendant. A sort of vase has been seen, from which, at command, wine, either of one colour or another, has been made to flow. From this emblem, the name of the *double fountain* principle has been given; to the principle on which, by this means, and in this shape, a power, which to the extent of it is so completely arbitrary, has been established.

To such a pitch of perfection has the exercise of power in this shape been carried, that of late days a judge has been seen scouting the quibble one day, giving effect to it the next. To what cause such inconsistency should be ascribed—whether to corruption, or to that wrong-headedness which, to so great an extent, judge-made law cannot fail to propagate, it is not possible to determine: to-day it is probably wrong-headedness: to-morrow it may be the other cause.

While decision on any other ground than the merits is allowed of in any case, thus the matter must continue: and for the extirpation of this enormity, nothing short of an entirely new system of procedure can suffice.

Lastly, as to *mis-seated punishment*. Delinquency, such as it is, being imputed to one person, not on him, but on some other—and that other one to whom no delinquency in any shape is imputed, is the burthen of suffering imposed. The attorney (say of the plaintiff) is supposed to have written some word wrong: for this impropriety, real or pretended, if real, intended or unintended, his client, the plaintiff, is made to lose his cause. If the case be of the number of those in which, in conjunction with the individual, the condition of the public at large is considered as suffering, as in the case of robbery and murder—of those in which the evil diffuses itself through the public at large, without infringing on any one individual more than another, as in the case of an offence affecting the revenue,—in either of these cases, it is the public that thus, for the act of the individual, is made to suffer: to the guilty individual, impunity is thus dealt

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out: to the not guilty individual, or public, groundless sufferings.

In the expression by which, upon any operation or instrument, *nullification* is pronounced, employment given to a sort of fiction is involved. One operation which has been performed is spoken of as if it had not been performed: the instrument which has been brought into existence is spoken of as not having had existence: at any rate, things are put, and professed to be put, into the state in which they would have been, had no such operation, no such instrument, had place. Amidst instances of mendacity so much more flagrant, scarcely would such a one as this have been worth noticing: but for exemplification and explanation of the effects, this mention of it may be not without its use. An offender, for example, has been brought to trial, and conviction has ensued: in the instrument of accusation (say the *indictment*,) one of those *flaws*, manufactured perhaps for the purpose, has been discovered: in consequence of the observation, arrest of judgment, as the phrase is, has been pronounced. What is the consequence? Whatever *has* been done is to be considered as if it had *not* been done: information which has been elicited, is to be considered as not having been elicited: evidence, by which the fact of the delinquency has been put completely out of doubt, having been elicited, and with perfect accuracy committed to writing, is to be considered as never having had existence.

In civil cases, the effect is the same. The same convenient extinction of evidence has place, when a new trial has been granted and brought on: though in this case not being needed, no such word as *nullification*, or any of its synonyms, as above, is employed.

Peremptory and *dilatory*: by these two words are designated the two so widely different effects produced in different cases by nullification. Case in which the triumph of injustice is most complete, that in which the effect is peremptory, or say definitive: because a word has been mis-spelt by a copying clerk, a convicted murderer, for example, walks out of court, under the eyes of his deliverer and accessary after the fact—the quibble-sanctioning judge—to commit ulterior murders. Throughout the whole field of penal law, of nullification pronounced on the proceedings on grounds foreign to the merits, this, according to the general rule, and expressed in the language of Roman law by the words *non bis in idem*, is the effect. Needlessly promotive of guilt as this rule would be in any case, it would not be near so amply so as it is, were it not for the blind fixation principle, applied to days, as above. Endless is the variety of accidents — endless the variety of contrivances — by any one of which a necessary witness may be kept from being forthcoming at the day and within the hour prescribed; while on a circuit, the judges, with their et cæteras, are circumgirating, as if by steam, on a wheel without a drag.

Humanity, that humanity which has penny wisdom for its counsellor, that humanity which can see the one object under its nose, but not the hundred of the like objects at a few rods distance, applauds the impunity given in this case: consistency would, if listened to, extend the impunity to all other cases: then would society fall to pieces: and in Blackstone's phrase, everything would be as it should be.

All this supposes the case to be of the number of those called *criminal* or *penal*: for, to these words substitute the word *civil*, the eyes of humanity are closed. In every case called *civil*, a new trial may be granted: in cases called *penal*, not: in the case called *civil*, the loss a defendant stands exposed to, may amount to pounds, by tens of thousands a-year: in the case called *penal*, it may not amount to ten shillings; but cases called civil may, on revision, be found pregnant with fees to any amount: cases called penal are comparatively barren.

When the immediate effect is no more than dilatory, the evil is not so *complete*, nor in every part *certain*. But, to a more or less considerable extent, evil has place in every such case — evil by delay; and delay of justice is, so long as it lasts, denial of justice: add to this, evil by expense of the repetition: — that evil, out of which cometh forth that same relative good — Judge and Co.'s profit — the contemplation of which constituted the motive and efficient cause by which the arrangement was produced.

Add now the effect of the instruments of regularly organized delay called *terms* and *circuits*, combined with that of the *blind fixation* principle, applied to *days*. Now, in the case of a new trial, comes an interval, in some cases, of half-a-year, in others of a whole year, interposed between the original series of proceedings, and the repetitional proceedings, if granted. In this state of things, to a prodigious extent, the dilatory operation of the virtual nullification put upon the original set of proceedings becomes in effect peremptory and conclusive. A necessary witness dies, goes off of himself to the antipodes, or is bought off: of the suitors, at whose charge, in case of nullification, the quibble has been made to operate, or without need of nullification the necessary piece of evidence has been kept out of the way, the purse or the spirits have become exhausted. As often as this has place, the dilatory effect, though in name and outward appearance less pernicious than the peremptory, is in reality much more so: the expected remedy is extinguished: and to the expense and vexation attached to the pursuit of it, a fresh quantity is added.

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Such is the advantage which, by the so elaborately and successfully organized system, is given to dishonesty when conjoined with opulence, that, in many instances, to the purpose of the preponderantly opulent depredator or oppressor by whom the depth of his destined victim's purse has been sounded, so far as regards ultimate success, the difference between the peremptory and the dilatory effect of nullification may be made to vanish.

XII. *Device the Twelfth — Juries subdued and subjugated.*

Not at the period here in question was this exploit hatched: juries, it seems probable, were not at that time in existence. But it was at that period that the foundation was laid, of the power by which this subjugation was accomplished: and the only use of the inquiry being how the yoke imposed on the people by Judge and Co. may be shaken off — a yoke of which this forms no inconsiderable a portion, a topic so important could not be left untouched.

The origin of the jury institution is lost in the clouds of primeval barbarism: inference must here be called in to do the work of narrative. That which inference suggests is this: Of some greater number, twelve or any other determinate number could not but have been a sort of committee. To the eyes of the historian not uniformly distinguishable was the entire body and the committee. When the one supreme criminal judicatory — the sometimes metropolitan, sometimes travelling judicatory — was instituted, then, all over the country, were extinguished the small territorial and adequately numerous local judicatories, in which the inhabitants in general took that part, which, scarcely in those rude ages, could be well defined, and if ever so well then defined, could not now be determined and stated. What was to be done? Even under the then existing thraldom, subversion, completed at one explosion, might have been too shocking to be endurable. "Come to me, wherever I am, and sit under me, as you do now under your several judges. Come to me: I do not say all of you, for in that case all production would be at a stand — but a part of the number selected from the whole; in a word, a committee; and let the number of it be twelve." When from one of these small judicatories a suit was first called up to the one high and great one, something to this effect must, it should seem, have been said. The shorter the journey, the less burthensome the duty. Whether this be more or less burthensome, the more important the occasion, the more plausible the excuse for the imposition of that same duty. Thus it was, that practice might make its way by degrees. As to the number, why twelve? Answer — Twelve was the number of the apostles: in favour of no other number could so cogent, unanswerable a reason be assigned.

Be this as it may, in the very nature of the case, never could juries have been altogether acceptable associates to judges. How should they, any more than independent Houses of Commons to Kings? Whatsoever was the disposition of the judge, partial or impartial, crooked or upright, proportioned to the share they took in the business, most frequently by intellectual inaptitude, but sometimes by intellectual aptitude, sometimes by moral aptitude, they would be troublesome. Act they could not, without being so. By their mere existence a troublesome duty was imposed upon the judge: the duty of giving something in the shape of a reason for the course prescribed by him.

Here, then, on each occasion, on the neck of the judge was a yoke, which, if it could not be shaken off, was to be rendered as light as possible. In case of non-compliance, it might by nullification, as hath been seen, be got rid of. But nullification, as hath also been seen, did but half the business. True it is, that, when applied to cases called *civil*, it could always prevent a well-grounded demand from taking effect; but it could not so constantly give effect to an ungrounded one. Applied to *penal* cases, it could at pleasure give impunity to crime; but especially in capital and other highly penal cases, scarcely of itself could it be made to subject innocence to punishment.

What remained applicable was a compound of intimidation and delusion: intimidation, applied to the will; delusion, to the understanding.

Of the intimidation employed, the one word *attaint*, will serve to bring to view a specimen. Persons, all twelve, imprisoned; moveables, all forfeited; dwellings, all laid low; habitations, lands, completely devastated; with et ceteras upon et ceteras. Maleficence must have been drunk when it came out with this Pandora's box; actual cautery applied, as often as a flea-bite was to be cured. Down to the present hour, this is law: continued such by judge-made law. In the course of a few centuries, statute law added a few trifles, that these serious things might remain unaffected. Statute law is repealable: common law unrepealable. Parliaments are allowed to correct their own errors: judges, under the name of the tyrant phantom, remain irresistible, uncontroulable, and incorrigible. No otherwise, it is true, than by compliance on the part of twice the number, could vengeance be taken for the non-compliance of the twelve. But the instances first chosen for this infliction would naturally be those in which, on the part of the sufferers, the delinquency had been least questionable. At any

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rate, upon Judge and Co. would infliction in such sort depend, that, of non-compliance, *attaint* could scarcely fail to present itself as a more or less probable consequence.

Of an infliction thus atrocious, the frequency, as it presents itself in the books, is perfectly astounding to a reflecting mind. No otherwise than by attaint, could the effect produced in these days by new trial, be produced in those. As often as a new trial is granted now, conceive the Pandora's box opened there.

Note well the efficiency of the instrument. Like the fabled razors, it performs the work of itself, without need of a hand to guide it. As it is with corruption, so is it with intimidation. To produce the effect, neither discourse nor expression of will in any other shape, is necessary: for the production of the effect, relative situation is perfectly sufficient. Where the intimidation was inapplicable, afterwards when at length the stream of civilization had washed it away altogether,—remained, as the only instruments applicable, arrogance and cajolery. Of the two instruments, arrogance was, of course, to the operator, the more acceptable. The use of it presented no great difficulty. "The law, (quoth the judge) is so and so." So far the judge: but what law? No law was there in the case. Who made it? The law—meaning that portion of it to which he gave the force of law—it was he who made it; made it out of his own head, made it for his own purpose, whatsoever that purpose happened to be.

Take, for example, libel law. A libel? What is it? Answer—If I am a judge, any piece of printed paper, it would be agreeable to me to punish the man for. Is he a man I choose to punish? I make it a libel: is he a man I choose not to punish? I make it a non-libel. But is it possible that, to a man in power, it should be agreeable to leave unpunished any individual audacious enough to say anything otherwise than agreeable to a man in power? O yes; it is just possible. Witness Morning Chronicle in the days of *Perry* and Lord Chief-Justice Ellenborough.

Now suppose a *code* in existence. Juries are now emancipated. Judges in effect now: no longer dupes; no longer tools; and, by the shackles imposed on the mind, made slaves. Judges in effect now, because ennobled and qualified so to be. The law (say they) is so and so: how should it be otherwise? not be what they thus say it is? The book is opened: there the passage is—they see it. More effectually learned would be the least learned juryman in such a state of things, than, under the existing system, the most learned judge.

To the *existing* system apply (be it remembered) these remarks: not to an improved system, under which judges would be made responsible, and appeals to a superior judicatory effectual, as well as the appeal to public opinion, strengthened by extension given to publication: under such a system, greater might be the power reposed in the experienced, less in the unexperienced hands.

"Thus stands the law!" Under the existing system, when a declaration to this effect is made by a judge, from what set of men, in the situation of jurymen, can non-compliance, how necessary soever to justice, be ordinarily expected? In this case, that being assumed as true, which, in every common law case, is so opposite to true—that is to say, the existence of the law in question—to the judge must this same law be known, if to anybody; as to these his unlearned pupils, to them it is completely unknown: so the inward consciousness of each man of them testifies. With the law, which thus, at the very moment of its being made, is revealed to them, begins and ends their knowledge. In such a state of things, so effectually, by the consciousness of their own ignorance, were they and are they blinded, their appointed guides may, to any degree, be blind, without being seen by them to be so. Under these circumstances, what but blind compliance could then be—aye, or can now be—the general practice? What exceptions there are, are such as are formed by here and there a rare occurrence, operating upon a rarely exemplified set of dispositions.

Of the acquitted decapitator, mention has been made above. If, by a union of past absurdity and present arrogance, a jury can be brought to this, to what is it they cannot be brought? But, in that case, how much is to be ascribed to judge's influence, how much to jurymen's abhorrence of death in the character of a punishment, cannot be affirmed with certainty: and so long as the punishment is death, impunity will, every day, be approaching nearer and nearer to the being every day's practice.

XIII. *Device the Thirteenth—Jurisdiction, where it should be entire, split and spliced.*

Jurisdiction has two fields—the *local* and the *logical*: the *local*, or say *territorial*, divided into *tracts* of *territory*; the logical, divided into *sorts of cases*. In the local field, that which the interests of justice require is, as hath been seen, *multiplicity*; in the logical field, as will be seen, *unity*. So much for reason: now for practice. Where, by the interests of justice, multiplicity was required, the interest of Judge and Co. established, as has been seen, the *unity*: where, by the interests of justice, unity was and is required, the opposite interest of judicature, that is to say, that same sinister interest will now be seen establishing *multiplicity*.

From the expression *jurisdiction split*, let it not be conceived, as if at the initial point

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of time in question, the field of legislation was, in its whole extent, covered as it were by one large block; and that, at different times thereafter, by the introduction of wedges or otherwise, the block was broken into the existing splinters, connected together, as they may be seen to be, by the conjunct sinister interest. The case is, that it is by degrees, as will be seen, that the aggregate composed of the splinters has been brought into its present so commodious state: namely, in some instances by fissure, in other instances by the gradual addition of portions of new matter *spliced* to the older. *Splitting* and *splicing*—by the union of these two operations has the actual aggregate result been brought into existence.

Matter of the aggregate this: Of the substantive branch of law different masses, three or four: and, for giving execution and effect to them, more than twice as many of the matter of the adjective, or say procedure branch of law; constituted every one of them, chiefly of the fictitious, or say judge-made sort; with only here and there a patch of real law — of legislature-made law — stuck in.

In the *keeping* of these portions of matter in the hands of different sets of judges, not in the *originally placing* them in these or any other separate hands, consists, at present, the sinister practice — the *device:* in the union of them, in each territory, in one and the same hand, the sole remedy.

As to the *splitting*, in some instances, the operation by which it was effected was performed at one stroke; that is to say, by one statute: call the mode, in this case, the *all-at-once* or *declared* mode; in other instances, silently, gradually, and imperceptibly: call it, in this case, the *undeclared* or *gradual* mode.

So likewise, as to the *splicing*.

Short description of the modes of operation in the two processes this:—

Original stock or block, the grand judicial authority, instituted by William the Conqueror, and styled the *aula regis:* Anglicé, the *king's hall* or *court*.

1. Splinter the first, court *Christian*, alias *Spiritual*, alias *Ecclesiastical:* species of operation, difficult to say whether the splitting or the splicing. Mode of operation, at any rate, the *gradual*. By the terror of punishment in the future life, it acquired, as will be seen, powers of legislation and judicature in the present.

2. Splinter the second, courts of *Exchequer*, stock or block, as above, the *Aula Regis* jurisdiction. Out of the *administrative* authority, now called *the receipt of the Exchequer*, instituted for the collection of the revenue, grew the *judicative*, called the court of Exchequer. Where contestation has place, if and in so far as professional assistants are called in, *administration* becomes *judicature*. Mode of operation, gradual; members of the court, a portion of those of the *aula regis*.

3. Splinter the third, Chancellor's jurisdiction. Stock or block, the Aula Regis jurisdiction. This functionary, decidedly a member of the Aula Regis, officiated therein as secretary of state: and, at the same time, his being the office from which issued the instruments, still styled *original writs*—instruments, by which commencement was given to so many sorts of suits, exercised thereby, in subordination to the legislative authority of the monarch, a sort of unperceived, but not the less real authority of the same kind. Species of operation, the splitting: mode, the gradual.

4. Splinter the fourth, jurisdiction of the court of Common Pleas. Stock or block, the jurisdiction of the Grand Justiciary. Species of operation, the *splitting*. Mode, the *all-at-once* mode. Splitting instrument, *magna charta:* remnant of the original stock or block, the court of King's Bench. Business now styled *civil*, allotted to the Common Pleas; business now styled *criminal* or *penal*, reserved to the King's Bench: also, either reserved by original institution, or acquired by encroachment, the appellate's superiority over the Common Pleas.

5. Splinter the fifth, equity jurisdiction of the Chancellor's court. Stock or block, the aggregate of this same functionary's authority. Species of operation, splicing: mode silent, unperceived, gradual. Remnants, the common-law business, now styled the *petty-beg* jurisdiction: petty in name, petty in bulk and nature.

6. Splinter the sixth, equity jurisdiction of the court of Exchequer. Stock or block, the common-law business of that same court. Species of operation, splicing. Mode unperceived, gradual: performed in imitation of the Chancellor's equity jurisdiction.

7. Splinter the seventh, Bankrupt Petition court. Stock or block, the Chancery jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, the statute 34 and 35 Henry VIII. ch. 4.

8. Splinter the eighth, Insolvency court. Stock or block, again the Chancery jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, 53 Geo. III. ch. 102: Subsequently applied instruments, 54 Geo. III. ch. 28, and 3 Geo. IV. ch. 123.

9. Splinter the ninth, jurisdiction of the justices of the peace acting collectively in general sessions. Stock or block, the King's Bench jurisdiction. Species of operation, splicing: mode, the *all-at-once* mode: splicing instrument, statute 1st Edw. III. st. 2. ch. 16.

10. Splinter the tenth, jurisdiction of j:-

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tices of the peace acting collectively in not fewer than two at a time in petty sessions. Stock or block — original, the King's Bench jurisdiction, as above: immediate, the above-mentioned general-sessions jurisdiction. Species of operation, splicing. Splicing instruments, various consecutive statutes. On the part of each, mode of operation, the all-at-once mode: on the part of the aggregate, the most thoughtful, silent, or unperceived and gradual.

11. Splinter the eleventh, jurisdiction of justices of the peace acting severally throughout the suit. Stock or block — original, the King's Bench jurisdiction: immediate, the general-sessions jurisdiction, as above. Species of operation, mode of operation, and instrument, as above.

12. Splinter the twelfth, jurisdiction allotted to justices of the peace acting severally, and exercising, at the outset of a suit, a fragment of jurisdiction: the suit being, for its completion, transferred to some one of four other judicatories: as to which, see above, Device XI. *Needless transference and bandying*. Stock or block — the King's Bench jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, statute 1 & 2 Phil. and Mary, ch. 13.

13. Splinter the thirteenth, jurisdiction of small-debt courts. Original stock or block, the *Court of Requests* in Westminster Hall, long since abolished. Species of operation, splicing. Mode, in the instance of each, the all-at-once mode. Splicing instruments, a multitude of statutes, each confining its operations to some narrow portion of territory.

Note, that in almost every one of these cases, the course taken for the ascertainment of the truth, in relation to the matter of fact, is different: as to this presently.

Ecclesiastical judicatories for maintenance of discipline among ecclesiastical functionaries: — military judicatories for maintenance of discipline among land-service military functionaries: — the like in relation to sea-service military functionaries. Admiralty prize-courts: on the subject of these judicatories, the demand for explanation not being cogent, and room being deficient, the sole purpose of the mention here made of them is the apprehension lest otherwise they should be supposed to have been overlooked.

Mark here the chaos! Different branches, or say masses, of substantive law, spun out in this dark way by judge-made law, thus lamentably numerous! and for giving execution and effect to them, to each a different mass of procedure, or say adjective law: masses framed in so many different modes, and upon different principles!

Single-justice courts, petty-sessions courts, and small-debt courts, the more entitled to remark, as affording, perhaps, the only instances in which judicial procedure has had for its main ends the ends of justice.

Essentially repugnant to the ends of justice (need it be said?)—essentially repugnant, if anything can be — this system of disunion: proportionally subservient to the actual ends of judicature: hence the arrangement so recently employed in keeping it up: in particular, as between equity courts and common-law courts.

Conducive to the ends of justice will this splitting and splicing work be said to be? Well then: here follow a few improvements, on the same principle. To the *bankruptcy* court, add a *stock-breaking* court: to the *insolvency* court, a *non-solvency* court, a *non-payment* court, a *non-liquidation* court, and a *non-discharge* court: each, with a different mode of procedure. Taking for the twelfth-cake the jurisdiction of the *Aula Regis*, let lots be drawn by all these courts, for these their respective styles and titles. Allot to each of these courts one commissioner to begin with; then three commissioners (the number in the *insolvency* court in its improved state,) then the square of three, 9; then the cube of three, 27: then the fourth power of three, 81; by which last, the number of the commissioners of *bankrupts*, or *bankruptcy*, will be surpassed by eight, and proportionally improved upon. To secure what is called *qualification*, meaning thereby *appropriate aptitude*, impose as a task and test the having partaken of a certain number of *dinners*, in some one of four great halls. Of situations of different sorts, in, under, or about these courts, number capable of being occupied by the same person at the same time, ten: by which the number occupied by a son of the ex-chancellor, the Earl of Eldon, will be outstript by *one*. To complete the improvement, conclude with pensions of retreat, after ten years' service, and pensions for widows, orphans, and upon occasion, sisters.

At the end of a certain length of time, the existing incumbents will be found, each of them, at the same time insufficiently and more than sufficiently apt, as was the case with the metropolitan police magistrates: then will be the time for adding one-third to their salaries: with or without the like addition to the other just mentioned so equitable and comfortable appendage.

We proceed now to present to the view of the Honourable House the evils, of which this system of disunion is, and so long as it continues in existence cannot but be, so abundantly productive: we shall point out the cause by which it has been produced: namely, the mixture composed of primeval inexperience and sinister interest.

In particular, in regard to imprisonment for debt, on its present footing, to wit, at the commencement of the suit—a period at which

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it is so frequently groundless, and so constantly ungrounded, it will be seen that it had no better origin and efficient cause, than sinister interest, in its foulest shape: special original cause, as will be seen, of this abuse, the splitting of the Common Pleas jurisdiction from that of the King's Bench; thereafter immediate cause, the grand battle between the two courts, in the reign of Charles the Second.

The use of confusion has already been brought to view: behold now one pre-eminently useful mode or efficient cause of it. In the practice of a large proportion of all these courts, both branches of law spun out together, the substantive branch out of the adjective, in the shape of *twist*, by the judge in the course of the operations of procedure, the twist afterwards woven into piece-goods by the firm of report-maker, report-maker's bookseller, abridgment-maker, and his abridgment's bookseller: and in this way it is, that, on pretence of judicature, over the whole field of law, power of legislation continues to be exercised: exercised by the combination of such essentially and flagrantly incompetent hands!

Are you a chief justice? Have you a law to make? to make on your old established mode? The following is your *recipe*. Take any word or number of words the occasion requires: choosing, as far as they go, such as are already in the language: but if more are wanted, you either take them from another language, old French or Latin, or make them out of your own head. To these words you attach what sense you please. To enable you to do, by this means, whatever you please, one thing only is now wanting. This is, that, in the accustomed form, by some person other than yourself (for you cannot yourself, as in some countries, give *commencement* to a suit,) the persons and things to be operated upon must be brought before you by the king's attorney-general, or an individual in the character of plaintiff. This done, you go to work, according to the nature of the case. Is it a civil one? To the plaintiff you give or refuse as much of defendant's property as is brought before you. Is it a criminal, or say penal one? You apply, or refuse to apply, to the defendant, the whole, or more, or less, of the punishment demanded for him at your hands. This you do in the first instance before and without any law to authorize you: for no such authorizing law have you any need of: after which, in the way just mentioned, what you have done receives, in print, authority, extension, and permanence, from the above-mentioned hands, being by them manufactured into a sort of fictitious law doing the office of, and upon occasion overruling, an act of parliament.

From the process pursued in the principal of these manufactories, a conception, it is hoped, tolerably clear and correct, may be formed, of the manner in which this species of manufacture has been, and continues to be, carried on. These are — 1. Equity courts; 2. Common-law courts; 3. Courts christian, *alias* spiritual, *alias* ecclesiastical courts.

I. Turn first to the self-styled *equity courts*. Words comprising the raw materials, *trust, fraud, accident, injunction, account*, with the word equity at their head — here we have the whole stock of them, or thereabouts: stock in *words* small: but in *matter* as abundant as heart can desire. One of them, the master-word *equity* — so rich is it, that out of it, and by the strength of it, anything could yet, and to this day can be done, that lust of power or money can covet. What can it not do? It can take any ward, every infant, out of the arms of any and every father, and at the father's expense, keep cramming it with the pap of imposture and corruption, till the father is reduced to beggery, and the entire mass of the child's, rendered as foul as that of the crammer's mind.

Equity? what means it? A betternost, yes, and *that* the very best, sort of justice. But, justice being, the whole together, so good a thing, what must not this very best sort be? Be it what it may, that which, on each occasion, is done by the judge of an equity court, is it not equity? Well then, by the charm attached to this fascinating word, to whatsoever he does, not only compliance and acquiescence, but admiration and laud, in the accustomed and requisite quantity, are secured.

II. Next as to the *common*-law courts; and in particular the great criminal-law court — the *King's Bench*.

Conspiracy, blasphemy, libel, malice, breach of peace, bonos mores, with their et cateras — of these raw materials is composed the stock of the common-law manufactory. That which equity does for chancellor, that or thereabouts, the single word, *conspiracy*, would of itself be sufficient to do for chief-justice of King's Bench. With this word in his mouth, what is it a chief-justice cannot do? who is there he cannot punish? what is there he cannot punish for?

Persons *conspire*, things *conspire* — to produce effects of all kinds, good as well as *bad*. In the very import of the word conspiracy is therefore included the conspiracy to do a bad thing: now then, so as proof has been but given of a conspiracy, that is to say, of the agreeing to do a something, or the talking about the agreeing to do it, the badness of this same something, and the quality and quantity of the badness, follow of course: they follow from the *vis termini*, the very meaning of the word, and may therefore without special proof be assumed.

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So far, so good, where you have two or more to punish. But how if there be but one? In this case, a companion must be found for him. But this companion it is not necessary he should have a name: he may *be a person unknown:* for, because one of two criminals is unknown, is it right that the other should escape from justice?

So much for the King's Bench manufactory taken singly. Now for ditto and Common Pleas *united*, cases and suits called *civil: verbal stock* here — *case*, *trover*, *assumpsit*, with their et cæteras.

Conspiracy, blasphemy, peace, and malice — these words were found already in the language, and, whatsoever was the occasion or the purpose, required only a little twisting and wresting to make them fit it. *Bonos mores*, *trover*, and *assumpsit*, had to be imported; *bonos mores* and *assumpsit* from Italy; *trover* from France: all of them had to undergo, in the machinery, more or less of improvement, ere they were fit for use. *Face* would have been as intelligible as *case*, and served as well, had fortune been pleased to present it; *clover*, as *trover*: *mumpsit* as *assumpsit*: but *case*, *trover*, and *assumpsit*, had fortune on their side.

III. Now as to *Court Christian*. No *fissure*, violent or gradual, requisite here. Nothing requisite to be done otherwise than in the quiet way, by *splicing*: by splicing performed imperceptibly, and in the dark; in the pitchy darkness of the very earliest ages: no need of custom, of snatching, in the manner that will be seen presently, from any other branch of the Judge and Co. firm: simple addition was the only change needed.

Mode of proceeding, or say *recipe*, this: — Take any act of any person at pleasure; call it a *sin*: add to it a punishment; call the punishment a *penance*. Observe, that the agent has a *soul*: say, that the soul wants to have good done to it: say that the penance will do this good to it. If, frightened at the word *sin*, the people endure to be thus dealt with, anybody is employed to accuse anybody of any one of these sins: if then he fails to make answer in proper form, you make him do this *penance*: so, of course, in case of conviction.

Now as to *fees*. Fees you receive for calling for the answer: fees for allowing it to be made: fees for making it; and so on successively for every link in the chain. But, suppose no such answer made? Oh, then comes *excommunication*: an operation, by which, whether he does or does not think that he will be made miserable in the *other* world, he will at any rate be made sufficiently so in *this*.

A circumstance particularly convenient in this case, was and is, that, besides the fees received in the course of the prosecution, the penance and the excommunication themselves have been made liquifiable into fees.

Sin, in this case, it was necessary should be the word: not *crime* or *civil injury*. But the same obnoxious act might, and may still, be made to receive all these different appellations; and, on account of it, the agent dealt with in so many different ways; made, to wit, after the truth of it has, by the three different authorities, in and by their several different and mutually inconsistent processes, been ascertained.

The act suppose a blow, and the sufferer, a clergyman. Common Pleas gives to this same sufferer money for remedy to the civil injury: King's Bench takes money from the man of violence, for the king: Court Christian takes money from the same for the good of his soul, distributing the bonus among the reverend divine's spiritually learned brethren.

True it is, that, upon proper application made, — one of these same judicatories (the King's Bench to wit,) may stop proceedings in one of the others — the Court Christian to wit. But defendant — what gets he by this? One certain suit, for the chance of ridding himself of another. And note, that in this fourth suit, the mode of establishing the fact which is the ground of the application is different from every one of the modes respectively pursued in the other three.

Such is the species of manufacture: spinning out of words, the sort of piece-goods called *law*, and *that* of the goodness that cloth would be of, if spun out of cobwebs. Now then, even from early time — time so early as the year 1285 — time not posterior by more than two centuries to the original period all along in question — what need or pretence has there been for it? Not any. So early as the year 1285, parliament gave birth to an idea, by which, had it been pursued, appropriately-made law might in no small proportion have been made in such sort as to occupy the place usurped by the spurious sort thus spun out blindfold, in the *ex-post-facto* way, in the course of judicature. At the tail of a paragraph, having for its subject-matter an odd corner of the field of law, the scribe of that day, as if by a sudden inspiration, soars aloft, and as if from an air-balloon, casting his eyes over the entire field, goes on and says, "And whensoever from henceforth it shall fortune in the chancery, that in one case a writ is found, and a like case, falling under the law, and requiring like remedy, is found, the clerks of the chancery shall agree in making the writ:" after which, for appropriate confirmation, follows reference duly made to the superordinate authority, the next parliament.

Behold here provision made for codification. Here was seed sown, but the soil not yet in a state to admit of the growth of it. In

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the barbarous mode of *ex-post-facto* judge-made law, were therefore of necessity fumbled out such indispensable arrangements, without which society could not have been kept together.

For ages, by common law alone, equity not being grown up to sufficient maturity, were these arrangements made. But, after all that had been thus done, and amidst all that was afterwards doing by common law, abundant and urgent remained the need of such arrangements, in addition to those the topics legislated upon, in this same blind and spurious mode, by chancellors, with the word *equity* in their mouths, may serve to show.

1. *Trust*, 2. *fraud*, 3. *accident;* these three have been already mentioned. Add to them —4. *injunction* (meaning *prohibition*,) as to use made of property in immoveables; 5. *injunction* as to pursuit of remedy at common law; 6. *account;* expressions all these so handy and commodious, because single-worded. Add to them moreover, 7. obligations to deliver *in kind*, *things* due; 8. obligation to perform *in kind*, *services* due: these, with the exception of *injunction*, as applied to common-law *suits*, belonging to substantive law. Add to all, the following, which belong to adjective law, or say judicial procedure: 9. elicitation of evidence, from the parties on both sides, — oral from their testimony, real and written from their possession; 10. at the time allotted to elicitation of orally elicited evidence, the quantum rendered always adequate to the demand; 14. elicitation and recordation made, for eventual use, without actual suit.

All these objects had and still has common law, as we shall show, left in a manner to shift for themselves: left either without any provision at all made for them, or without any other than such by which the purpose cannot, in any tolerably adequate degree, be answered.

Think now, of the enormity of the deficiency left, and inaptitude exhibited, by the assemblage of all these gaps: —

1. First, as to *trust*. Think of a system of law, under which, in relation to this head, nothing, or next to nothing, was done. Over the whole field of law, particularly over the *civil*, extends the demand for the matter which belongs to the head of *trust*. Power exercisable for the benefit of the possessor, it is called *power:* power, in so far as not exercisable but for the benefit of some *other* person or persons, is called *trust*. In particular, in the hands of all public functionaries, considered as such, what power soever has place, is so much trust.

2. Secondly, as to *fraud*. Over the whole expanse of the field of law, more particularly the penal branch, extends the need of provision in relation to *fraud:* in whatever shape *maleficence* operates, *fraud* shares with *violence* the privilege of officiating as its instrument.

3. Thirdly, as to *accident*. Of the import of this term, the vagueness immediately strikes the eye. But, for bringing to view some conception of the application on this occasion made of it, — the two words — *conveyance* and *obligatory-engagement*, may here serve. Of the provisions requisite to be made under this head, the principal beneficial purpose is the *prevention of disappointment:* the grand and all-comprehensive purpose, by which the purport of the portion of law occupied in the giving security for property, requires to be determined.

4. Fourthly, as to *injunction*, applied to the purpose of restraining mischief to immoveable property; *injunction*, meaning interdiction, or say inhibition or prohibition: for, in ordinary language, we speak of *enjoining* a man to *do* a thing, as well as to *forbear* doing it. As to the operation performed under this name by a court of equity, it has for its correspondent and opposite operation that which, under the name of a *mandamus*, is performed in the courts of common law. In the case of the *mandamus*, the act commanded is a *positive* act; in the case of the *injunction*, commonly a *negative* act.

Note here, by the bye, that to the provision made by both these remedies together, belongs the property of inadequateness. For, to the evil, whatsoever may have been the amount of it, which, antecedently to the attempt made by them respectively to stop it, has already taken place — no remedy do they attempt or so much as profess, to make application of: no compensative remedy, no satisfaction in any other shape, no punitive: and at the charge of an honest, what is the profit which a dishonest man will not be ready to make, if assured that the worst that can happen to him for it, is the being stopt from making more? To himself no punishment; to the party wronged no satisfaction? But, as to any such ideas as those of all-comprehensiveness and *adequacy*, nearer would they be to a bed of Colchester oysters, than they are to a bench of English judges! — a bench — whatsoever be the number of seats on it, whether one, four, or twelve.

5. Fifthly, *Injunction*, as applied to the pursuit of remedy at common law. Now for a riddle. To itself by itself this operation would not naturally be expected to be seen applied: it would be to the same operation performed by equity, what *suicide* is to the species generally understood by the name of *homicide*. As little would it, under the same judicial establishment, have been applied to the operations of any judicatory, by another calling itself a *court of Equity*, if, to common sense, in union with common honesty, it were possible to obtain admission into such a

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theatre. Setting up one judicatory, to put a stop, at the command of any man that will pay for it, to the operations of another, and frustrate what in profession were its designs, and this, without so much as a supposition of error on the part of the judicatory so dealt with, — in an arrangement such as this, may be seen a flower of ingenuity that assuredly would in vain be looked for in any other field than that of English judicature. But, though no common-law court, as such, nor therefore any common-law court which is merely a common-law court, has as yet, it is believed, been in the practice of thus dealing by itself, yet an English judicatory there is, which, being, like the marine corps, of an amphibious, and moreover of an ambodextrous nature, has been, and as often as called upon continues to be, in the practice of robbing the chancery shop of this part of its custom, by employing one of its hands in tying up the other, and one portion of its own thinking part, such as it is, in frustrating what had in profession been the designs of the other. This riddle is the *court of Exchequer*. For a parallel, suppose this: — Enactment that no public building shall ever be erected — no church, no palace, no prison, no posthouse — without employment successively given to two architects, the first to erect a building in one style — say the Gothic — the second to pull it down, and erect upon the site of it another in a different style — say the Grecian. Taken in both its parts, matched thus in absurdity would the equity injunction system be: exceeded it would not be: were the mental cause of the evil mere folly without knavery, Gotham itself would find itself here out-Gothamised.

6. Sixthly, as to *account*. Think of a judiciary establishment, with three superior courts in it, professing, each of them, to settle mutual accounts to any amount, and on that ground receiving fees before anything is done, and at the hands of all applicants: these professed auditors two out of the three all the while unprovided with the machinery, without which that which they undertake to do cannot be done.

The case is — the process of account is — not, as in other cases, a simple and transitory, but a compound and a continuous process, the subject-matter being an aggregate, composed of two sets of demands; made one on each side, each of them, in case of contestation, capable of affording the matter of a separate suit. The process, continuous as it is, the Common Pleas the only one of the three courts which, in a case between subject and subject, took cognizance of it by right, gave itself no means of performing, otherwise than within the relatively short and determinate space of time, into which the business, if performed at all, could be injected and condensed, like the business of a *play*, under the dominion of the unities. This business the only judicatory capable of going through in all cases, is the Equity court. This has, it is true, machinery enough, and takes time enough. But, the machinery of it having for its object and effect the multiplication of fees, and thence the prolongation of time, the only sure result is the division of a large proportion, if not the whole, of the property of the accountant parties, among the tribe of auditors: and it is like a prize in a lottery, if any portion of the net balance finds its way into the pocket of him to whom it is due.

7. Seventhly, *as to delivery of things to the right owner*: the case of *restitution* included. Think of a system of law, by which no one moveable thing whatsoever *was*, or to this day *is*, so much as undertaken to be secured to the rightful owner! No: not so much as *undertaken*. For if a man, not even imagining himself to have right on his side, has possessed himself (as, without exposing himself to punishment, he may do) of whatever moveable thing of yours you most value — (a horse, a picture, an unpublished manuscript, for example) — what remedy have you? An *action*. Behold now how much better off, in this case, your dishonest adversary, the wrong-doer, is, than you, the party wronged! Only in case of its not being worth so much as it is valued at, does he give you back what he has thus robbed you of.

And by this action, what, even in case of success, is the utmost you can get? Not (unless the man who has thus injured you so pleases) the thing itself, but, instead of it, what is called the value of it: this value being what has been set upon it at full gallop, by twelve men brought together by chance: twelve men, not one of whom, unless by accident, understands anything about the matter. The estimate having been thus made, this same wrong-doer it is, who, after the days or months he has had for consideration, takes his choice, and determines whether to let you have your property back again, or to convert it to his own use. And this money, when the jury have awarded it to you, will you have it clear? Not you, indeed: not this money will you have, but the difference between this and what you will have to pay your attorney, after he has *received* what, in the name of *costs*, has been awarded to you at the expense of the wrong-doer. And the amount of that same *money received*—what will it be? Something or nothing, or less than nothing, as it may happen: provided always that the said wrong-doer has the money, and *that* money capable of being reached by the so precariously effective process of the law: estates in land, money in the funds, shares in joint-stock companies, with property in an indeterminate number of other shapes, being of the number of things not thus reachable.

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8. Eighthly, as to *fulfilment of obligatory engagements*. Think of a system of law, which gives not effect to any one sort of engagement, which men, living in society, have need to enter into, unless the intended violator of the engagement pleases.

In this case, behold the same favour to the wrong-doer as in the just-mentioned case: instead of fulfilment, money received from the dishonest man, if he has it, and choose to give it; unless he choose to give it, none. Agree, for example, for the purchase of an estate. Common law does not so much as profess to give it you. Natural procedure would give it you in a few days. Equity will give it you or not give it you, but when? At the end of several times the number of years.

The case is, that, bating the obtainment of a lot of land in entirety, or a portion of it by partition among co-proprietors, or a portion by a writ called an *elegit*, in lieu of a debt,—a process too complicated and rarely exemplified to be worth describing here,—such is the lameness of the law, that, for administering to a party wronged, satisfaction for the wrong, the only species of remedy which the common-law partners in the firm of Judge and Co. are (saving the narrow exception afforded by the case of a *mandamus*) to this hour provided with, is *that* which consists in money: money of the defendant's, if, after paying charges, by good fortune any such money is left, and can moreover be come at: for which purpose, the sheriff of the county, that is to say, under his name, and by his appointment, a nobody-knows-who seizes and causes to be sold whatever is come-at-able and saleable: the remedial system being in such a state, that a man may have to the amount of any number of millions in the shape of government annuities, and each one of a variety of other shapes, without the sheriff's being able, were he ever so well disposed, to come at a penny of it: one consequence of which is, that a dishonest man, with other men's money in his hands, may consume it in luxuries, or do anything else with it he pleases, if he had rather continue in a comfortable apartment in a prison, than part with it.

So much as to substantive law: now as to adjective law, and therein as to evidence.

9. Ninthly, *as to elicitation of evidence from the testimony and the possession of parties*. Think of a set of judges, with whom it was and still is a principle, to keep justice inexorably destitute of evidence from this its most natural, most instructive, and oftentimes sole and thence indispensably needful, source!

A defendant (suppose) is in court. Is this, or is it not, your handwriting? My lord chief-justice—will he put any such question to him? Not he, indeed. Will he suffer it to be put to him? As little. Good reason why. Infinite is the crop of fees that would be nipt in the bud by any such impertinence: and if a question of this sort were to be allowed to be put, what reason could be given for refusing to give allowance to any other?

Considering how unpleasant it would be to a dishonest man, with an honest man's money in his hands, to part with it; still more so to a malefactor to do anything that could contribute to his punishment—considering all this, and in all sincerity sympathizing with these their partners and best friends—conscience, in these tender hearts, revolts at the idea of any such cruelty. Thus it is with the common-law branch of the firm.

Somewhat less sensitive are the nerves of the *equity* branch. Evidence it *has* brought itself to draw from this so surely reluctant source. But it is on one condition: and that is—that years be employed in doing that which might be so much better done in a few minutes, and pounds by hundreds or thousands in doing that which might be so much better done at no expense.

10. Tenthly, *as to the time allotted to the elicitation of really elicited evidence; and the adjustment of the quantity of it to the demand*. Very little to the taste of the common-law branch is any apt adjustment of this sort. In what manner it reconciles opposite mischiefs—*delay* and *precipitation*—turning them both to account, has been shown under these same heads. General rule—the less the quantity of such evidence, and the less the time consumed in the elicitation of it, the better: for nothing is there to be got by it. As to elicitation in the *epistolary* mode, nothing, even at this time of day, does common law know of any such thing. For this employment of the pen, neither at the primeval period in question, nor for many centuries thereafter, were hands sufficient to be found. That sort for which alone there was, in all that time, *clerk power* in sufficiency, was that which, being essentially false, was distinguished, as above mentioned, by the name of *pleadings*—written pleadings: and by which, as much money thus employable as the pecuniary means of the country could furnish, was to be got. So much for common law. For equity it was that fortune reserved this the richest mine in the field of procedure. Observing how much was to be got by penmanship, it sets its inventive genius to work, and having invented this new mode of elicitation, stept in, proffered its services, and got to itself this new branch of the evidence-eliciting business: terms and conditions as usual; time, by years: pounds, by hundreds or thousands, as above.

Under the head of the *mendacity device* reference is made to the present one, for a hot-bed, and mode of culture, in and by which this fruit, so delicious to learned palates, is forced. Now for a sketch of it. Frequently, not to say generally, a part more or less con-

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siderable, of the evidence necessary to substantiate the plaintiff's case, has for its source the recollection of the defendant. Of course, not always without more or less of hurt to his feelings can this sort of information be furnished by this same defendant. In tender consideration thereof, common-law judges, as above, refuse so much as to call upon him, or even to suffer him, to furnish it. The keeper of the great seal and of the king's conscience is not quite so difficult. He has his terms, however, to make with the plaintiff, and they are these: "Whatever the defendant knows that will help your case, you will, of course," says his lordship to the plaintiff, "be for asking him for, and putting questions to him accordingly. Good: and the answers he shall give. But, it is upon this condition. Before you ask him how the matter stands, you must yourself begin and tell him how it stands: otherwise, no answers shall you have. This is what you must do, as to every fact you stand in need of. Now then, to do this, you must, of course, for each such fact, have a story framed, such as will suit your purpose: but *that* it is your counsel's business to do for you: he, and he alone knows what is proper for the occasion. What it consists of, is a parcel of lies, to be sure. But that's his concern, not your's: you have not to swear to them. I and mine get money by all this: so there is no harm in it: and, as you do not swear to it, you can't be punished for it.

"As to another world, *that* to be sure there is, and with a God's court in it. But there, it is your counsel that will have to answer for it, not you: you can't help it: no, nor he neither, without losing his fees. I, for my part, have some thousands of these lies upon my back, or I should not be where I am: look at me: what am I the worse for it?"

11. Eleventhly, as to *elicitation and recordation, made, for eventual use, without suit.* Be the occasion what it may, be the source what it may, evidence obtainable to-day may cease to be obtainable to-morrow. Here then may be seen a deficiency: but, as to the want of supply for it, at the early age in question, no wonder it should have had place. In the field of justice, much insight into future contingency was not to be expected from men who, to so vast an extent, were blind to what was, in this same field, passing under their own noses.

For this deficiency, *equity* had no objection to afford a supply: but of course upon her own terms, — those terms, which have so often been brought to view. Those terms required *a suit* on purpose: for, a suit was necessary to *equity*, how little soever necessary to *justice*.

As to recordation, — at the early period above mentioned, clerk-power enough there was for the *pleadings* — the mixture of *lies* and absurdities above described; none was there for the evidence, the only sort of matter which presented a chance of being chiefly composed of relevant and material *truths*. Accordingly, in the mass of matter called the *record*, no sort of matter can there be so sure of not being found, as that which stands distinguished by the name of evidence.

Not but that, to prove its own existence, the entire hodgepodge may, on a particular occasion (fees being first received,) be admitted under the name of evidence: to prove, for example, that a man was convicted of murder: but by what it was that the murder was produced — whether, for example, by an endeavour to kill the man, or by an endeavour to kill a fowl, (for, for this has a man been convicted of murder) — if this be what at present you want to know, in the newspaper you may be sure to find it; in the record you will be sure *not* to find it.

Such, for exigencies of all sorts, being the provision made by common law before the birth of equity, — made in the common-law courts, before the formation of the equity courts, — behold now the account given of it by *Blackstone*.

Speaking of an old book in Latin, called the *Registrum Brevium*, — composed chiefly of forms of orders called *writs*, given in the name of the king to the sheriffs, — in it (says he, III, 184,) "*Every man who is injured* will be sure to find *a* method of relief *exactly* adapted to his own case, described in the compass of a few lines, and yet *without the omission of any material circumstance*." So much for Blackstone. To the dream of this reporter, would you substitute the sad reality? For *a* put *no*: for *omission* put *insertion*: make these corrections, the picture will be nearer the truth. Dates none, arrangement none, other than the alphabetical, either in the collection itself, or in Judge Fitzherbert's commentary on it, and in the additions made to that commentary in any subsequent editions made of it. So much for the universal oracle. Such is the source from whence the notions of the universal unlearned, as to what the law is, have down to this time been derived!

To return to Equity court. In the provision made by common law, gaps requiring to be filled up, sure enough sufficient: sufficient in number, sufficient in magnitude: necessity of filling up sufficiently urgent. But, for the filling them up, was any additional court, either a necessary or so much as a proper instrument? An additional court thus kept distinct and separate from the court to which it was added? More particularly, a court invested with such powers as, in relation to the court it was added to, were assumed by this same so called *court of equity?*—a court superior to it in effective power, and yet without being, either in name or nature, a

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court of appeal from it? Taking up the matter at the pleasure of any man, who, without any ground whatsoever, would pay the price set upon the injustice at any stage of the suit, riding over the competent authority, and rendering useless everything that had been done, and throwing away every penny that had been expended in that same judicatory? The thus maltreated judicatory all the while not the less abundantly lauded, for the being regarded as requiring to be thus dealt with?

A sort of severance this, mischievous enough, — and, as such, worthy enough of remark at any time. But, *at present*, a circumstance which gives to it, in the particular case in question, a particular degree of importance, — gives, to the particular case of severance here in question, and produces accordingly the need for thus dwelling on it, is — the care, which, on the occasion of the *recently instituted improvements*, has been taken, to keep it up (this same severance,) and, of course, along with it, the uncertainty, delay, vexation, expense, and lawyer's profit, engendered by it.

Lastly, as to the aggregate composed of the four courts thus instituted, — the several separate denominations of necessity attached to them, the jurisdiction formed by the several splinters thus put side by side, and the mischievous consequence flowing of course from the very nature of the operation — splitting and splicing operation.

Of the application thus made of so many different names, the consequence is — the implied information and assurance of the existence, and thence of the necessity, of so many different natures, and modes of proceeding on the part of the several courts thus differently denominated.

In the case of these denominations, what serves to fix and thicken the cloud composed of them is, their being derived from different sources: in some cases, the source is the name of the *species*, or rather, as will be seen, the *sub-species* of suit; in other cases, the *initiatory process* — that is to say, the *written instrument* by the delivery of which, or the *operation* by the performance of which, the suit takes its own commencement. Behold them; here they are: —

I. Under the species of suit termed *civil*, name of the initiatory process, if in the Common Pleas, *action:* if in the King's Bench, in one sort of case, *action* likewise; in another sort of case, comes the name of the instrument, *mandamus;* name of an operation by which it is preceded, *motion for a mandamus;* in another sort of case, name of the instrument, *quo warranto;* name of the antecedent operation, *motion for a quo warranto:* in an Equity court, including the equity side of the amphibious court — the Exchequer — *bill;* in the common-law side thereof, *action;* in another sort of case, in a Christian court, name of the instrument, *libel.*

II. Under the species of suit termed *criminal* or *penal* — common to all these courts in one sort of case, is one sub-species, *attachment:* to which denomination is in some cases substituted the circumlocutory and milder denomination, constituted by the antecedent operation — *motion that the defendant may answer the matter of the affidavit* (this being the initiatory instrument:) in another sort of case, in the King's Bench, name of one sort of instrument, *indictment;* in the same sort of case, in that same court, name of another sort of *instrument, information:* name of the *antecedent operation, motion for leave to file an* INFORMATION: in the same sort of case, still in that same court, name of the instrument again, *information:* name of the antecedent operation, *filing an information*, to wit by the attorney-general, without *motion;* in another sort of case, in the Exchequer, name of the instrument *qui tam information:* in another sort of case, in the Christian court, name of the instrument, *libel* again: note here, by the bye, in the case of this word *libel*, the confusion further thickened, by the giving to one and the same appellative the commission of officiating as the sign of two opposite things signified: namely, an alleged *disorder*, and a professed *remedy*.

Sufficient, it is hoped, this exhibition, without the addition of the rarer sorts of suits, such as the *scire facias* and its *et cæterus*.

Such is the enrichment which the vocabulary of English jurisprudence has actually received, from the principle pursued by this practice: the employing different operations with different instruments, for the attainment of the same end. What bounds are there to the ulterior enrichment, which, from the same principle, it might, with as good reason, be made to receive? Take a few examples: —

First, as to *courts:* by multiplication given to the names, and with them to the species, of these judicatories. One example may here serve. Take for a model the *court of equity*, with this its sentimental name: additional courts with like imitative names — court of *probity*, court of *integrity*, court of *common honesty*, court of *honour*, court of *righteousness:* another such winning name, court of *conscience*, in point of propriety, forming a striking contrast with the court of equity, has already been brought into employment by statute law.

Take secondly and lastly, for the instrument of multiplication and confusion, the name of the instrument, by which commencement is given to the *process*. Model, in this case, the word *libel;* — a word meaning, in the original Latin, a *little book:* proposed imitative names of instruments — *leaf, sheet, roll, scroll, volume*. Yes, *volume:* for, in some cases,

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in equity more especially, scarcely to the existing sort of instrument — the *bill*, to wit — would even this appellative, notwithstanding the seeming exaggeration, be altogether misapplied.

Now as to the degree of *appositeness*, with which the signs are here coupled with the things signified. For an emblem of it, take two hats: into one put the *things;* into the other the *signs;* which done, then, having drawn out of the one a *thing*, draw out of the other a sign for it: as, on a Twelfth-day, styles and titles are coupled with slices of cake and names of cake-eaters.

In the aggregate of all this surplusage, may moreover be seen, one out of the host of visible examples, of the way in which, by the English lawyer, as by the astrologer, — and for the same purpose, — has been created, out of nothing, a sort of sham science.

Correspondent to this science, with the art belonging to it, is the list of official functionaries, employed, on this occasion, in the exercise of the art. Note well the multiplicity and ingenious variety of their denominations. By one single one alone of the four Westminster-hall courts, the King's Bench, is furnished the list which follows. But, for a standard of comparison, note first the sorts of functionaries which, under the official establishment hereinafter proposed for giving execution and effect to the here proposed natural system of procedure, would be requisite and necessary under the command of the judge. Here it follows: — 1. *Registrar;* 2. *Prehensor*, or say *Arrestor;* 3. *Summoner;* 4. *Doorkeeper;* 5. *Jailor*. Now then follows the list of those actually in existence as above under the King's Bench:* — "1. Chief clerk; 2. Master; 3. Marshal of King's Bench prison; 4. Clerk of the rules; 5. Clerk of the papers; 6. Clerk of the dockets, judgments, satisfactions, commitments, &c.; 7. Clerk of the declaration; 8. Clerk of the common bails, posteas, and estreats; 9. Signer of the writs; 10. Signer of the bills of Middlesex; 11. Custos brevium; 12. Clerk of the upper treasury; 13. Clerk of the outer treasury; 14. Marshal and associate; 15. Sealer of the writs; 16. Judge's clerks; 17. Sheriffs of London and sheriff of Middlesex; 18. Secondaries; 19. Under-sheriff; 20. Ushers, tipstaffs, &c." Here at length ends the list of the swarm of locusts which buzzes about this one of the four courts — the King's Bench: places of feeding, no fewer than ten: some of them not less than three miles from one another. Calculate who can, the quantity of time consumed, with expense correspondent, by attorneys, in the journeys necessary to be made all over this labyrinth.

* Taken from an instructive little treatise, intituled, a Complete History of an Action at Law, &c. by Thomas Mayhew, Student of Lincoln's Inn, 1828: pages, no more than 32.

XIV. *Result of the Fissure — Groundless Arrest for Debt.*

Comes now the battle royal: — battle of the courts: battle for the fees. Result, groundless arrest. As at present, on pretence of debt: effect, imposed on innocence an aggregate of suffering, vying in severity with that inflicted on the aggregate of crime.

Let it not here be supposed, though it were but for a moment, that, on imprisonment for debt, condemnation without reserve is meant to be pronounced. Condemn in the lump — condemn without exception — imprisonment, and even imprisonment for debt; for debt you would condemn all satisfaction, and as well might you, for all crime, condemn all punishment.

Look for the proper time, you will find it in that of the *second* of the operations requisite to be performed in the course of the suit: at the time of, and by, the first, the existence of an adequate demand for this same second operation having been ascertained: improper time, that of the first operation: this same first operation being the arrest itself, performed without any such ascertainment: performed by the judge, without inquiry, and at the pleasure of any one who will purchase of him this service, at the price he has set upon it: — upon so simple a distinction turns, in this case, the difference between the perfection of good, and the perfection of evil.

Ascertained (asks somebody,) the existence of this same adequate demand, by what means? Answer: By this means — To give commencement to the suit, attends in court the plaintiff, and stating his demand, states at the same time the need there is of the arrestation: subject-matter of it, either the body of the proposed defendant, or some property of his, or both: this operation in the next instance: otherwise on hearing of the demand, off go person, or property, or both, and therewith all hope of recovery for the debt — all hope of effectual justice.

Mark now the security afforded by the here proposed course, against the oppression now so completely established, and so abundantly exercised — the oppression exercisable at pleasure by any man in the character of plaintiff, on almost any man in the character of defendant: at the same time, the superior efficiency of the means afforded for the recovery of the debt.

Being thus in the *presence*, the applicant is completely in the *power*, of the judge: unlimited is the amount of the punishment, to which, in case of purposed and mischievous misrepresentation, he may be subjected. In this state of things, two opposite dangers present themselves to the judge's choice: in case of the non-exercise of this power of precautionary seizure, — danger of injustice to the

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detriment of the plaintiff, by loss of the debt; in case of the exercise of this same power, danger of injustice, to an indefinite amount, to the detriment of the proposed defendant thus dealt with.

Between these two opposite mischiefs, who does not see, that no otherwise than by a scrutiny into the circumstances of each individual case, can any tolerably well grounded choice be made? and, for this scrutiny, no source of information has place as yet, other than the evidence of the applicant, extracted by his examination: an information, without which, or any other, under the existing system, arrestation is performed without scruple; that is to say, on the *body*; and with as little might it be, though at this stage of the proceedings it never is, on *property*.

This power, then, either it is exercised, or it is not. If yes, security will need to be taken for two things: 1. For the applicant's effectual responsibility, to the purpose of compensation or that of punishment, or both, as the case may require; 2. For his being eventually reached by a mandate, or, in case of need, by a functionary armed with a warrant for arrestation, wheresoever it may happen to him to be, during the continuance of the suit: — a security this last, the demand for which (it may be seen) has place in the instance of every person, to whom, for whatever purpose, in whatever character, it happens to have presented himself to a judge. a security with which, for reasons that will be seen, Judge and Co. know better than to have provided themselves with.

Why say *attendance*, not *appearance*? Because, by lying lips and pens, the word *appearance* has been to such a degree poisoned, as to be rendered unfit for use. When, in the record, entry is made of what is called the defendant's appearance in court, what is the real fact? Never that he, the defendant, has made his appearance in court; always that an attorney employed by him has made *his* appearance: nor even this in the court, but in another place; to wit, in one of the offices, of the nature of those contained in the abovementioned list.

To return to the applicant's here proposed actual attendance. In most instances it will be possible, and with advantage practicable. But in some instances it will be either impossible, or not with advantage practicable. Of these last cases, for the purpose of the here proposed system, a list has been made out: so likewise of all the *shapes*, of which the just-mentioned security is susceptible; which list may be seen below: so likewise of all the several diversifications, of which the mode of securing *intercourse*, or say *communication*, with an applicant, or any other person who has made his appearance during the continuance of the suit, is susceptible.

For the institution of this little cluster of arrangements, a combination of common sense, and common ingenuity, with common honesty, was indeed necessary, but at the same time sufficient. In the provision made by the existing system, where is there to be seen any symptom of the union of these same requisites? How should there be? Without the existence of the applicant in the presence of the judge at the outset of the suit, nothing of all this can be done: and, as there is such continual occasion to observe, scarcely can the presence of a *dun* be more appalling to a spendthrift, than, in a *civil* case, to an English supreme-court judge, the presence of an individual, whose property (and under the system of mechanical judicature, as hath been seen, in most cases without knowing anything about the matter) he is disposing of.

Now, for want of some such as these proposed arrangements, under the existing system, behold the state of things. General rule this: At the pleasure of any man, without grounds existing, or so much as pretended to exist, any man may be arrested and consigned to a jail, with no other alternative than that of being, if able and willing to pay for the accommodation, consigned to an arresting-house, called a *lock-up-house*, or a *spunging-house*.

Exceptions are—1. Where the debt does not amount to so much as £20; 2. Where, when it does amount to that sum, the plaintiff omits to make an affidavit, whereby he avows upon oath that the sum demanded by the suit is justly and truly due. And this, without adding *upon the balance*: so that a man to whom another owes £20,000, may be arrested by him, on a particular account specified, for £20. Originally the sum mentioned on the occasion and for the purpose of the limitation thus applied, was no more than £10: it is by a recent act that it has been raised to this same £20, in the year of our Lord 1826: original act, that of the 12 Geo. I. ch. 28; year of our Lord 1725. Date of the act under which, for the benefit of the Court of Common Pleas, the practice of arrest for debt was established, year of our Lord 1661: thus had the abomination been reigning a hundred and sixty-five years before so much as this alleviation was applied to it. Yet, such as it is, keen in Judge and Co. was the sense of the injury thus done to the whole partnership. Faces, lengthened by the recollection and report of it, were witnessed by persons yet alive.

Oh precious security! Mark now a set of incidents, any one of which would suffice for rendering it ineffectual: —

1. In case of *mutual* accounts, a man who is a debtor on the balance, and moreover in a state of insolvency, in such sort as to be incapable of making compensation for the wrong, is free to make use of it in such sort

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as to inflict vexation, and perhaps ruin, on the creditor thus dealt with.

2. No limit is there to the multitude of knowingly false demands, which, to the wrong of one man, may thus be made by any other, and this without his being at the expense of a perjury; by which, however, if committed, he would not, in more than the trifling degree which, under the head of *oaths* has been seen, be exposed to hazard.

3. To a man who is about to leave England, having therein no property, or none but what he is taking with him, or none which, by such inadequate means as the law affords, can be come at, this apparent check is, it will be seen, no real one.

4. On so easy a condition as the finding another man, who, being a man of desperate fortunes, will, for hire, perform his part in this so extensively contemned ceremony,—any man may cause his intended victim to be arrested for sums to any amount, and thereby for a sum for which it will not be possible for the victim to find bail.

5. The assertion is admitted, without being, in any case, subjected to cross-examination. Hence the invitation to mendacity and perjury.

6. To those alone whose connexions on the spot, in addition to the opulence of their circumstances, admit of their finding bail, is the privilege of being conveyed to a spunging-house instead of a jail, extended.

So much for inadequacy: now for incongruity. To the above-mentioned efficient causes of inadequacy, may be added the following features of incongruity, relation had to the existing system:—

1. Swearing to the existence of the debts, the affidavit-man is forced to swear to his knowledge of the state of the law: that same law which, with such successful care, it has been rendered and kept impossible for any man to know.

2. The testimony thus delivered, is testimony delivered by a man in his own favour, in contradiction to a rule and principle of common law. Note that *inconsistency*, not *inaptitude*, is the ground of condemnation here.

General result—with the exception of the privileged few, every man exposed to ruin at the pleasure of every other, who is wicked enough, and at the same time rich enough, to accept of the invitation which the judges and their associates in the iniquity, never cease thus to hold out to him.

So much for the *evil* done by the battle, and the *good* which so obviously should have occupied the place of that same evil. Now for the battle itself. Origin of the war—power, thence custom, surreptitiously obtained from parliament by the judges of the Common Pleas, a little after the Restoration, at the expense of the judges of the King's Bench. The power thus obtained was, that of employing, in an action for *debt*, this same operation of arrest, in giving commencement to the suit. By the known acquisition of this power, was made, to all who would become customers, the virtual offer of the advantage that will be seen. In the case of the honest plaintiff, it consisted in the obtaining his right in a manner more prompt and sure than before: in the case of the dishonest plaintiff, to this same advantage was added, as has been seen, the power of ruining other persons, in a number proportioned to the compound of cupidity, malevolence, and opulence belonging to him, at pleasure.

This plan succeeded to admiration. Common Pleas overflowed with customers: King's Bench became a desert. Roger North, brother and biographer of Lord Keeper *Guildford*, at that time chief-justice of the Common Pleas, depictures, in glowing colours, the value of the conquest thus made. At this time, *Hale*—the witch-hanging *Hale*—prime object of Judge and Co.'s idolatry—was chief-justice of the King's Bench. Chagrined, to the degree that may be imagined, by the falling off of his trade, he put on, of course, his considering cap. What was to be done? After the gravest consideration, he at length invented an instrument (as a manuscript of his, published in Hargrave's Law Tracts, informs us,)—an instrument, with the help of which he himself, with his own hands, succeeded in stealing that same power which the legislature had given to the court of Common Pleas. Yes: so he himself informs us: so blind to the wickedness of telling lies, and getting money by it—so dead to the sense of shame had been made, by evil communication, this so eminently pious, as well as best-intentioned judge, that ever sat upon a Westminster-Hall bench. Name of the instrument, the *ac etiam*: description of it not quite so short. To give it, we must go back a little.

At the primeval period so often mentioned, the great all-competent judicatory had received, of course at the hands of the Conqueror, this same power of arrestation, applicable at discretion. At the time when, by the original *fissure*, the allotment of jurisdiction was given to the Common Pleas—to that judicatory, to enable it to give execution and effect to its decrees, was given the power of operating, to this purpose, on property, in certain of its shapes: the power of operating on person not being given to this court; except that, at the end of a long-protracted course of plunderage, of which presently, came the process of *outlawry*: outlawry—a rich compost, in which, in a truly admirable manner, barbarity and impotence, to the proper and professed purpose, were combined.

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On this same occasion, the cases remaining to the King's Bench branch of the all-comprehending jurisdiction, after the fissure, were those in which, under the name of *punishment*, suffering was purposely inflicted: sometimes called *penal*, sometimes *criminal*, was the class composed of these cases. By the words *treason*, *felony*, and *misdemeanor*, were originally marked out so many degrees (treason the highest) in the scale of punishment: with like effect, between felony and misdemeanor, was afterwards inserted the word *premunire*. In process of time, a little below *misdemeanor*, King's Bench contrived to slip in the word *trespass*: and thus armed, as opportunity served, it began its encroachments on the jurisdiction and fees of the helpless Common Pleas.

Misdemeanor meant and means *misconduct*, or say *misbehaviour*: *trespass* meant *transgression*: *transgression*, in the original Latin *transgressio*, is the going beyond a something: the something, on this occasion understood, was of course a law. Not that any such thing was in existence: no matter. On this, as on every other part of the field of common law, it was feigned.

When, for anything or for nothing, it was the pleasure of the king, or of any man whom it pleased him to allow thus to act in his name, that a person should be dealt with in this manner, plaintiff's attorney went to the shop, and the foreman, on hearing it, sold him an order directed to the sheriff, in the body of which instrument that functionary was informed that defendant had committed a trespass; and from the sheriff, the information would, in course, pass on to the defendant, when the time came for his finding himself in Lob's pound.

In process of time came a distinction: a distinction between *trespass* simply, and trespass *upon the case*. Much the wiser the defendant was not for the information, in either instance, how much soever the poorer: trespass meant nothing except that the man was in the way to be punished, and trespass upon the case meant just as much.

Here, then, were two instruments: now for another such: this was the word *force*. Whatever was done, by *force* not warranted by legal authority, was (it was seen) in everybody's eyes a *crime*: out of this word was accordingly made this other power-snatching instrument. One vast acquisition thus made with it, and it was a vast one, was the cognizance of suits having for their subject-matter title to landed property. To every man who claimed a portion of land, intimation was given — that, if he would say he had been turned out of it, instead of *turned out* using the word *ejected*, relief should be given to him by King's Bench: relief, by exemption from no small portion of the delay, expense, and vexation, attached to the preliminary, and, as will be seen, so ingeniously wire-drawn, process of the Common Pleas. *Ejected* means turned out by *tossing*: and how could anybody be tossed out of anything without force?

Emboldened by success thus brilliant, they went on — these pre-eminently learned and ingenious combatants — to the case of *adultery*. Here, court *Temporal* had to fight with court *Christian*, alias *Spiritual*. Court *Spiritual* had seen in this practice a *sin*, and dealt with it accordingly. With this sin Common Pleas had found no pretence for intermeddling. More fortunate, more bold, and more sharp-sighted, was his lordship of the King's Bench. He saw in it (so he assured and continues to assure the sheriff) a species of *rape*: a crime of some sort it was necessary he should see in it, and the nearest sort of crime was this of *rape*. It was committed, he said, *vi et armis* — by *force and arms*. This invention was quite the thing: that *arms* had, in every case, more or less to do in it, was undeniable: and seeing that, on the occasion in question, motion could not but have place, and considering that motion can scarcely be made without a correspondent degree of force, thus was this part of the charge made good: and in return for their custom, injured parties received from the learned shopkeeper, at the charge of the adulterers, money under the name of *damages*.

Inconsistency was here in all its glory: *crime* had *punishment alone*, not *damages*, for its fruit. This was a principle: yet adultery was thus made into a crime, and at the same time made to yield damages: it was thus a *rape* and *not rape*: rape, that it might be made into a crime; yet not rape, because, if it were rape, adulterers would be all of them to be hanged: to which there were some objections.

Of the weapon employed on this occasion, the form was the same, as that of the weapon employed, as above, in the war with the court of Common Pleas; and here follows a further explanation, for which, it must be confessed, *that* former place was the more proper one: but, in discourse, clouds are not quite so easily dissipated as formed. Speaking to the sheriff after commanding him to take up the defendant on the ground of an accusation of *trespass*, — trespass not giving intimation of anything, except the eventual design of punishing as for a crime, — his lordship went on to add, *as also* to a demand on the score of debt, to an individual (naming him.) Here then, by his learned lordship, were two real crimes committed in the same breath, for the purpose of pretending to inflict punishment for, and really reaping profit from, this one imaginary crime: one at the charge of the Common Pleas judges, to whom alone, by *Magna Charta* as above, belonged the cog-

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nizance of cases of debt: the other, at the charge of every member of the community, thus subjected to the power of groundless arrest and imprisonment, as above. On this occasion, in dumb show — dumb indeed, but not the less intelligible — was this his language: — "All ye who believe yourselves to be in the right, and all ye who know yourselves to be in the wrong, but, at the same time, wanting the accommodation for the purpose of ruining some person you have fixed upon, come to my shop: there is my prison, and to it he or she shall go."

Thus much to wished-for customers. Now to the sheriff: "Take up *Thomas Stiles*, and put him into your jail: when there, he *will be* in our power, we will make him pay a sum of money which *John Noaks* says he owes him." Such, in the address of the chief-justice to the sheriff, was and is the language of the appropriate document — the only source, from which any conception could be formed, of the calamity into which the proposed defendant was and is thus destined to be plunged. It was a *writ*, addressed to the sheriff of the county in which the defendant was, or was assumed to be, resident — "Will be in our power?" Be it so: but, suppose him actually in their power: — his being so, did it give them, in relation to their younger brethren of the Common Pleas, any right which they did not possess before?

As to his being already in their power, neither was this the case, nor was it so much as supposed to be. But, should it so happen that the sheriff had taken the man up and brought him to his lordship, whose clerk's signature is to the writ, then the destined victim would be in his said lordship's power, and then he would make him comply with the demand, or defend himself against it, or abide the consequences.

As yet here is no lie. But, if the supposed residence of the destined defendant were anywhere but in Middlesex, then came the demand for lies, and with it the supply. *Lie the first*—averment that defendant's residence is in Middlesex: and by this was constituted the warrant, such as it was, for *writ* the first, with its fees.

Lie the second — said defendant is lurking and running about (*latittat et discurrit*) in this county of : the blank being filled up with the name of the county in which it suits the purpose of the plaintiff, or his attorney, to suppose him to be. This is what he was and is told, in the text of another writ, addressed to the sheriff of county the second, for whose information the writ, addressed to his brother of Middlesex, is thus recited, and the difference between the cost of the one writ and that of the two writs, is a tax or penalty, which all persons who omit to live in Middlesex pay for such their default.

Such was the plan of the counter-invasion. Serious and sensibly felt it cannot but have been, to the potentate whose domain was thus invaded.

How to get back the advantage was now the question. Under English practice, *deception* (need it now be said,) is, on each occasion, the readiest, most efficient, and favourite instrument. A man had forged a hand: — "Don't trouble yourself about proving the forgery," said his learned adviser; "forge a release." A similar instrument was accordingly fabricated by the Common Pleas, and succeeded. Not but the re-conquest had some difficulties to contend with: for (as honest Roger informs us,) king's tax and chancellor's fees were affected by it: but these difficulties being the only ones, and these removed, King's Bench's mouth was thus closed.

No hypocrisy here. For a cloak of any sort, no demand so much as suspected. Two sharpers playing off their tricks against one another — such is the character in which, even with his approbation, the two lord chief-justices are held up to view, by this confidential brother of one of them. "*Outwitting*," one of the words employed: "*device*," another. Increase of business the avowed object: of business such as has been seen: proportioned to the success, the exultation produced by it: proportioned to the amount of the booty, the triumph of the irresistible robbers.

Sole interests so much as pretended to be consulted, the interests of Judge and Co. Of this firm, his Majesty was, as above declared, one of the partners: the swinish multitude, with their interest, no more thought of, or professed to be thought of, than so many swine.

The King's Bench was not the only place at the hands of which the helpless offspring of Magna Charta lay exposed to invasion. Another inroad was that made by the court of Exchequer. In the pretence made in this case, no such downright and all-involving lie was, however, included. In this case, the king was indeed stated as delivering the commandment; and, forasmuch as his Majesty knew not, on any occasion, any more of the matter than the Pope of Rome — in this shape, and thus far, was a lie told. But that which his Majesty was represented as insinuating, though but insinuating, had commonly more or less of truth in it. It was, that the plaintiff was in his Majesty's debt: a state of things which would, of course, have place, in the instance of any man, who had tax to pay, or service to render.

But this same court of Exchequer, to which no such power had been given, what business had it to meddle or make, while there sat the Common Pleas, to which the power *had* been and continued to be given? Had there even been no such judicatory as the Common Pleas,

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the only persons, in whose instance anything done by the Exchequer could contribute to the proposed effect, would have been such as were in a state of insolvency: nor yet all of these: for, till all demands on the account of the king were satisfied, never was so much as a penny allowed to be touched by any other creditor than his said Majesty. Yes, as above observed, *insinuating* and nothing more. For all that his Majesty is represented as saying is, that *the plaintiff says* he owes a debt to his said Majesty, not that such is really the case.

So much for this enormity. Out of it grew another, to which the word *bail* gives name. *Finding bail*, as the phrase is, is the name of one species of those *securities*, allusion to which has been made, as above. In this case, after having been arrested by an emissary of the sheriff's, and consigned to the appropriate gaol, or, on paying for the indulgence, kept in the house of this same emissary, or some person connected with him (name of the house, a *lock-up-house* or *spunging-house*,) he is, if certain persons render themselves responsible to the sheriff, or without this security, if the under-sheriff so pleases, liberated. These persons are styled the bails: number of them, one, two, or more, commonly two. As to what they undertake for, it is, in different cases, different: but, for the most part, it is the consigning the defendant to the gaol, or else satisfying the plaintiff's demand.

As to the remedy which this same security affords — nothing could be more completely of a piece with the so industriously and inhumanly fabricated disease. To the comparatively opulent, an alleviation — to the comparatively indigent, an aggravation. Complete, in an admirable degree of perfection, is the machinery employed in the application of it: to such a degree, that lengthy treatises are occupied in the description of it: enormous the complication — proportionable, of course, the delay, vexation, and expense, produced by it.

As to all this suffering, what do Judge and Co. care about it? Just as much as they care for the rest of the mass of suffering which the system, in its other parts, organizes — what a steam-engine would care for the condition of a human body pressed or pounded by it.

Directed to its proper end, the process of *judicial security-finding* is an operation, having for its object *alleviation* to the hardship inseparable from the process of subjecting a patient to the sorts of operations performed upon him by the judge: in each individual case, applying the maximum of the alleviation of which that particular case is susceptible. To all the several modifications of which this hardship is susceptible, to apply one and the same modification of this process — is about as reasonable as it would be to apply, to every species of disease, one and the same medicine.

Of the modifications of which this process is susceptible, we shall presently have occasion to present a view to the Honourable House.

On each occasion, to the circumstances of the individuals in the individual case, does the nature of things render the adaptation of it necessary: and on no one occasion, under the existing system, can it be thus adapted.

In some cases, of which the present case is one, on the *defendant;* but in other cases, and on the occasion of every suit in the *first* instance, that is to say, at the *outset* of the suit, on the *plaintiff*, does the obligation require to be imposed. In each such instance, to the elicitation of the same individualizing circumstances, the examination of the individual by the judge himself is necessary: and to this process (one exception excepted, of which presently,) not more unquestionable can be the abhorrence of the most profitable *malâ fide* suitor, than, under the existing practice, that of an English judge.

On each occasion, the subserviency of the operation to the purposes of justice will depend upon the proportion of the hardship of being subjected to the particular obligation in question, and the hardship which, were it *not* imposed, might have place: *probability* being, in both cases, taken into account.

As to incarceration and confinement, the more extentious and vexatious the modes of them respectively are, the more urgent is the motive by which the sufferer is impelled to make choice of this *bail-finding*, or any other, mode of escape from them: escape, perpetual or temporary only, as the case may be: choice, that between the fire and the frying-pan. Whichever it be that is embraced, the exigencies of the lord chief-justice were of course effectually and abundantly provided for: from the bailing process, fees upon fees: from the incarceration, a vast mass at once in the shape of patronage. Forty thousand pounds has been stated as having been refused: on the occasion of the recently alleged mutiny, from £8,000 to £10,000 a-year stated as being the profit of the jailor. To ascertain in each case the quantum of the enjoyment extracted by these two associates from the misery of the many — the quantum, and thence the proportion — is among the operations, the performance of which we beg leave, with all humble submission, to propose to the Honourable House.

Required at the hands of *plaintiffs*, the security would have kept out *dishonest plaintiffs* — Judge and Co.'s best friends and customers. Of course it was not to be thought of. Hypocrisy required that the profession should be made: and so, in the language of some of the courts, it was made: — *si fecerit te securum:* sinister interest required that it should be no better than a pretence.

Performed or exacted of defendants, directly opposite is the effect of this same secu-

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rity: thus placed, the obligation renders the above-mentioned ample service.

As to this matter — the jakes, of late so notorious by the name of the *secondary's office* in the City of London — this abomination, with the immense mass of filthy lucre at the bottom of it, and the forty years' patience of the constituted authorities under the stench of it, speaks volumes.

To the case in which the process of taking examinations was, and is, an object of abhorrence to the judge, an objection has just been alluded to as having place. It is this. To the sight of mere *parties*, and in particular in the situation of plaintiffs, at the outset of the suit, at which stage the examination might nip it in the bud, abhorrence unassuageable: — to persons coming in, at a stage at which the suit is established, and the examination can have no such injurious effect, open arms and welcome. Why this difference? Answer: At the first stage, the examination would exclude fees: at this subsequent stage, it necessitates fees.

To the performing or hearing the examination of a party in relation to the matter of his suit, the horror of an English judge is, as above, insuperable. To the hearing and conducting the examination of the same man under the name of a *bail*, in relation to a matter foreign to the matter of the suit, — repugnance none. Cause of difference, the so often assigned universal cause. Examination of the party, the time being that of the outset of the suit, would, as above, nip the fee-harvest in the bud: examination of bail gives increase to it.

After all, it depends upon incidents — incidents too intricate to be here developed — whether it is by the four sages — or now, of late days, one of them — that the opposition and eventual justification — so the examination is called of the bail — shall be performed, or by some attorney, without the benefit of that same scrutinizing process.

The attorney is an under-sheriff; — the under-sheriff of the county in which, as above, the species of egg called the *venue*, has been *laid*, or into which it has been *removed*.

The under-sheriff is, on every occasion, the deputy of the sheriff. The sheriff is a great land-owner who (every year a fresh one,) is appointed by the king: a servant who, in the teeth of reason and scripture, is appointed to serve not two only, but twice two masters: that is to say, at the three Westminster-Hall common-law courts, with the addition of the court of general sessions of the peace.

To this same business, as well as to all business but that of parade, the sheriff contributes — what a Roman emperor used to contribute to a victory gained at a thousand miles distance — *auspices*: the sheriff, auspices: the attorney, mind and legal learning: legal learning, an accomplishment in which, authorized by their sanction, the *one*, in so inferior a degree learned, thinks it not *robbery* to be equal to the *four* sages.

If, with the requisite amendments, necessitated by change of times, the system of local judicatories were restored, — each judge would, for all purposes, be provided with his own ministerial subordinates: and for all of them he would be responsible.

In the city of London, the acting functionary under the sheriffs is styled *the secondary*. Forty years of depredation, production of so many unheeded mountains, heaped up one upon another, of correspondent misery, have at length attracted to the subject the attention of the local authorities. But, while eyes are shut against causes, eloquence may abound, effects all the while continue undiminished.

Moreover, in the same bailing process there is a gradation: witness the phrases *bail below*, and *bail above*. Bail *below*, are bail whose aptitude is established by the attorney. Bail *above*, are bail whose aptitude, after or without opposition, is established by the four sages. Bail *above* are, in some cases, the bail *below*, thus promoted: in other cases, a fresh couple.

Above and *below* together, bail generate *bail-bond:* bail-bond, *assignment* thereof, with eventual suit: bond, assignment, and suit — fees. To justice, use for bail and assignment the same as for an old almanack.

From these particulars, imperfect as they are, some conception, how inadequate soever, may be formed, of the proportion in which the aggregate property of all the unfortunates so arrested, is transferred from the ordinary and undignified destination of operating in satisfaction of debts, to the dignified function of contributing to the fund provided for the remuneration of legal science.

Note here, that he who makes a prudent use of the offer so liberally held out by the judges to every man — the offer thus made to ruin for him, on joint account, as many men as he wishes, will take care that the debt sworn to shall be greater than the utmost sum, for which, for love or money, bail can, by the destined victim, be procured.

Here ends our exposition, and we humbly hope the sufficient exposure, of the devices, by the too successful practice of which, the attainment of the ends of radically corrupt judicature have been substituted to that of the ends of justice.

Praying thus for justice, and *that* justice accessible, we proceed to pray for the means necessary to the rendering it so: rendering it so, to all of us without exception. In particular, — of the arrangements which, in our eyes, are calculated to produce that so desi-

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rable effect, and for the establishment of which we accordingly pray, — a brief intimation is presented by the propositions following: —

I. First, as to the JUDICIARY ESTABLISHMENT.

1. That, for suits of all sorts, criminal as well as civil, there be two *instances*, or say *stages*, or *degrees*, of jurisdiction: style and title of the judges, before whom the suit is brought in the first instance, *judges immediate* — of those before whom it is brought in the second instance, or say in the way of *appeal*, *judges appellate*.

2. That, with two exceptions, and these as limited as the nature of the service will permit, to each judicatory, cognizance be taken of all sorts of causes: those included, cognizance of which are at present taken by the aggregate of the several authorities by which judicature is exercised: which courts will have to be abolished, as soon as the causes respectively pending before them, shall have been disposed of. This, to exclude complication, uncertainty, collision, delay, and useless expense.

3. That these exceptions, and these the only ones, may be the following: — *Military* judicatories, for the maintenance of discipline, land and sea service included: and *ecclesiastical* judicatories, for the maintenance of ecclesiastical discipline, on the part of ecclesiastical functionaries, belonging to the established church.

4. That, for taking cognizance of suits in the first instance, judicatories may be established in such number and situations, that, by an individual whose house is the most remote from the judicatory which is the nearest to it, the portion of time, during which in the day in question the justice-chamber is open, may be passed by him therein without his sleeping elsewhere than at his own home: and that, accordingly, no individual may have more than twelve miles or thereabouts to travel, in order to reach his own judicatory.

5. That, as in the existing principal court, there be not, in any instance, sitting at the same time, any more than one single judge. This, for individual responsibility — the sole effectual — as well as also for saving expense and delay by mutual consultation and argumentation.

6. That, to obviate delay and failure of justice, every such judge be empowered and obliged to provide substitutes, styled as in Scotland, *deputies*, one or more, having for their sole remuneration the prospect of being constituted *judges principal*: and that when there has been time for a competent length of probation, no man, who has not served as depute, shall be capable of being constituted judge principal, in which way the provision of *judge power* will be as it were elastic, adjusting itself at all times to the quantity of the demand: judges, thenceforward, none but such as have served an apprenticeship to pure justice, and not to the indiscriminate defence of right and wrong, as at present.

7. That, seeing that, if the power of deputation be conferred as above mentioned, hands in number sufficient for every exigency need never be wanting; every judicatory in the kingdom will hold its sittings every day in the year, without exception, unless needless delay and denial of justice are not deemed more consistent with regard for justice on some days than on others: and that no exception be made by the *Sabbath*, unless and until it shall have been proved that the God of justice is indifferent to justice, and that he who was content that an *ox* or an *ass* should be delivered out of a pit, would be displeased at the animals being delivered out of the hands of the wrong-doer; and that the sale of mackerel on that day is a work of more urgent necessity than the gratuitous and uninterrupted administration of justice: lastly, that no exception be made by the night time, unless and until a night shall have been pointed out during which injustice sleeps; in which so may justice likewise; seeing, moreover, that to certain purposes, under the name of *police*, *justice* is, in certain places, in that part of the twenty-four hours, even under the existing system, actually administered.

8. That, to each such judicatory, be attached a competent set of *ministerial officers*, sufficient for giving, in all ordinary cases, execution and effect to its mandates: but with power, as at present, in case of necessity, to call in aid all persons in general, the military force included. This, instead of the sheriff, that one man who hitherto, in despite of scripture and reason, has been employed to serve not merely two, but twice two masters. This, to exclude the complication, with the consequent collision, litigation, useless expense, delay, and vexation, which from this cause have place at present.

9. That, of these ministerial officers, such as are now employed in the intercourse between judges on the one part, and the respective subordinates as well as parties and witnesses on the other part; such as are now empowered to use force, as well as to officiate without force, be distinguished by some such name as *prehensors* or *arrestors*; the others distinguished from them by the name of judiciary messengers, or, for shortness, *messengers*: and that for trustworthiness and economy, the business of *message-carrying* be, as far as may be, performed by the machinery of the *letter post*.

10. That the remuneration allotted to judiciary functionaries, ministerial as well as magisterial, be, the whole of it, in the shape of *salary*; and that, by no functionary belonging to the judiciary establishment, money

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or any other valuable thing or service, under any such name or in any such quality as that of a *fee*, be receivable on any occasion, on any pretence. This, to exclude the expense, delay, extortion, and vexation, which have ever hitherto been produced by the multiplication of judicial instruments and operations for the purpose, and with the effect of giving correspondent increase to the masses of fees.

11. That such remuneration be paid, the whole of it, at the expense of the public at large; no part of it at the expense of any individual or body of individuals interested: fines for misconduct as below, excepted. This, to avoid excluding of any person from the benefit of justice: every person who in the suit in question is not able to pay the whole mass of the fees exacted on the occasion of that suit, being at present, as well as having at all times hitherto been, thus excluded: and because that which the rest of the community enjoy without, litigants do not obtain otherwise than by and with litigation, with its vexation and expense,—the benefit of justice.

12. That, to obviate the danger and suspicion of partiality through private connexion, no judge-immediate principal shall remain in the same judicatory for any longer term than *three* years, or thereabouts: and that, for this purpose, an appropriate system of *circuiting* be accordingly established: but that, for continuing in an unbroken course the business of recordation, or say *registration*, the functionary by whom it is performed be stationary.

13. That, in every justice-chamber, for the better administering of that security, which it is in the power of *public opinion* to afford, for conduct apt in every respect on the part of judges,—commodious situation be allotted for two classes of persons, under some such name as that of *judiciary inspectors:* the one, composed of suitors, waiting for their suits to come on, say *expectant suitors* or *suitors in waiting;* the other, of *probationary lawyers*, of whom presently.

14. That, in all sorts of suits, without exception, a *jury* shall be employable: but, to lessen the aggregate weight of the burthen of attendance,—not till after an *original hearing*, before the judge sitting alone, nor then but by order of the judge, whether spontaneous (for example, for the purpose of confronting such of the evidence as requires to be confronted,) or else at the requisition of a party on one side or the other; in which case it shall be obligatory on him to order and carry on a fresh hearing, termed a *recapitulatory hearing*, or say a *new trial*, before a jury, organized in manner following.

15. That in cases of all sorts, one excepted, all functions belonging to the judge, one excepted, shall be exercisable in common with him, by the jurors: the *imperative*, or say the effectuative, being that on which the effect of the suit depends, being, for the sake of individual responsibility, allotted exclusively to the judge. Functions thus exercisable, these:—1. *Auditive*, applied to everything that is to be heard; 2. *Lective*, applied to everything that requires to be read; 3. *Inspective*, applied to everything that requires to be seen; 4. *Interrogative*, applied to all questions that require to be put; 5. *Commentative*, applied to all observations which they think fit to make; 6. *Ratiocinative*, applied to whatever reasons they think fit to give for anything which they say or do; 7. *Opinative*, exercised by declaration made of opinion, in accordance or discordance with the opinion which, on the occasion of the exercise given to the effectuative function, is pronounced by the judge: exercised collectively, as by juries under the existing system, the *opinative:* exercisable individually, all the rest.

16. That the class of cases, in which the *effectuative* function, as above, shall be exercisable by the jury, so far forth as to render of no effect a judgment of *conviction* if pronounced by the judge alone, shall be that in which the higher functions of government, as such, have, or may naturally be supposed to have, a special personal interest: for example—*treason*, *rebellion*, *sedition*, *defamation* to the injury of a public functionary, or set of public functionaries, as such, and the like.

17. That for lessening the burthen of attendance on juries,—instead of a number so superfluous as twelve, a lesser number, and that, for the sake of a majority, an *uneven* one—that is to say, *three*, or at the utmost, *five*—be employed: by which arrangement, the practice of perjury on the part of juries, in a number varying from one to eleven,—perjury, to wit, by falsely reported unanimity, with torture for the production of it, will be made to cease: for the better direction, one out of three, or two out of the five, being of the class of special jurymen: the foreman being to be of this class.

18. That the institution of a *grand jury*, with its useless delay, incomplete, secret, naturally partial, and inconsistently, though happily limited, applicability,—be abolished.

19. That, for receiving *appeals* from the decrees and other proceedings and conduct on the part of the above-mentioned judges *immediate*, there be judicatories *appellate*, all single seated, in such number as experience shall have shown to be necessary: if more than one, station of all of them the *metropolis: that* being the central spot, to which persons from all parts of the country have occasion to resort for other purposes; and at the same time *that* in which the best-formed and most effective *public opinion* has place—public opinion! most influential and salutary check upon the conduct, and security for the good conduct,

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of these as well as all other public functionaries: and, as below, no evidence being proposed to be received other than that which has been orally elicited in the court below, and consigned to writing, no attendance by parties or witnesses will, on this occasion, be necessary. And that, after the outset of the here proposed change, no person be capable of serving as judge appellate, who has not for a certain length of time served as judge principal immediate.

20. That, in each judicatory, as well appellate as immediate, for officiating in suits in which government, on behalf of the public at large, is interested — there be a functionary, under the name of the *government advocate*, with *deputation* and on the part of the principal, *migration*, as in the case of the judge: and superordinate to them all, a *government advocate general*.

21. That, for administering professional assistance to suitors who, by relative *weakness*, bodily or mental, are disqualified from acting as plaintiffs or defendants, for themselves, — or, by relative indigence, from purchasing assistance from professional hands, — there be in each judicatory a public functionary under the name, for example, of *eleemosynary advocate:* also with deputes, and migration as above.

22. That, considering how opposite in their nature are the duties and habits of the judge and the advocate, — *impartiality* the duty of the one, *partiality* the duty, and proposed misrepresentation the unavoidable practice, of the other, — no functionary be transferable from one to another of these lines of service.

23. That, at the head of the judiciary establishment, there be placed a single functionary, styled, as in other countries, *justice minister;* at whose recommendation, subject to his Majesty's pleasure, as at present by the *Chancellor*, shall be filled up all other judicial situations.

24. That *accusations* or *complaints* made against a judge, immediate or appellate, on the score of official delinquency, or relative inaptitude from any other cause, be heard and determined by the *justice minister*.

25. That accusations or complaints, made for the like cause, against the justice minister, be heard and determined by the *House of Lords:* and that, on that consideration, no person, during the time of his officiating in the situation of *justice minister*, shall be capable of sitting in the *House of Lords;* nor yet in the *House of Commons*.

26. That, considering the inherent and indefeasible comparative inaptitude of so numerous a body for the purpose of constant and protracted judicature, in *all* cases, and the next to universal habitual non-exercise of this function on the part of their lordships in *criminal* cases; — and that in *civil* cases, their jurisdiction is, in so large a proportion, at present employed, nor could ever fail to be employed, as an engine of delay and expense, operating to all his Majesty's subjects but a comparatively few as a denial of justice, — it may please their lordships to confine the exercise of their judicial function to the abovementioned cases, with the addition of such criminal cases, in which, at present, a member of their own House is party defendant: — thus making a generous sacrifice of their uncontested rights on the altar of justice.

27. That, when it has been covered by a coating of *legislature-made* law, the field of legislation be preserved from being overspread by an overgrowth of *judge-made* law: for interpretation or melioration, amendments proposed *in terminis* by judges, on the occasion of the several suits, being, by appropriate machinery attached to the code, of course, unless negatived by a committee of the one House or the other, — and that, when these arrangements have been made, no reference, for any such purpose as that of interpretation, to anything said by a judge in any one suit, be permitted to be made in any other suit. Of this arrangement, another use will be — that of their applying the necessary preventive to the mischief which might otherwise be produced, by discrepancy between the decrees of the several appellate judicatories, if more than one. This, when the field of law has been covered by *legislature-made law:* and in the mean time (though not equal facility,) equal necessity will there be for the like provision, during the time that, to so immense an extent, the field has no other covering than that which is composed of *judge-made law:* — of judge-made law — that spurious and fictitious kind of law, if such it must be called, with the dominion of which, so far as it extends, all security is incompatible.*

So much as to the *judiciary establishment:* follows what we humbly pray in relation to *procedure*.

28. That, as in former times, no suit shall receive its commencement, but by the personal appearance of some individual in open judicatory, which individual shall be responsible for his conduct in relation thereunto: and, to that purpose, shall, before he is heard for any other purpose, make declaration — not only of his present abode, but of such abode or abodes, at which any mandate issued by the judge may be sure to reach him at all times, down to that of the termination of the suit: that, for the purpose of all ulterior judicial processes, every missive addressed to him be considered as having reached him: except in case of any such accident as, with-

* Drawn up for this purpose, a complete plan of operations, expressed *in terminis*, is already in existence.

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out blame on his part, may come to be alleged by him for the purpose of *excuse:* saving to such applicant the faculty of changing such address, from time to time, on giving timely information thereof.

29. That, exceptions excepted, the person so applying be a party whose desire it is to be admitted in the character of pursuer: of which exceptions, examples are — 1. Giving simple information of an offence, appearance on behalf of any person or persons; 2. Purpose of the appearance, giving simple information, without desire to be admitted *pursuer:* say pursuer, in all cases, instead of plaintiff in civil cases, and prosecutor in criminal cases, as at present.

30. That, for non-compliance with judicial mandates, an all-comprehensive system of appropriate excuses be looked out for, and on the supposition of the verity of the alleged facts, allowance given to them.

31. The person by whom the matter of excuse is submitted, will in general be the person to whom the mandate is addressed: but, in several cases, such as sickness, absence, &c. from other persons, excuses for him must of necessity be accepted.

32. That the institution of *excuse-giving* which, under the name of *casting essoins*, had place in former days, when the attendance of parties, instead of being as now prevented, was compelled — be, for this purpose, reviewed: and the extension which the exigence of justice requires, be given to it.

33. That, on every occasion, the proceedings be regulated by regard paid to *convenience*, to wit, the mutual convenience of all individuals concerned, parties and witnesses: this being a matter which, they being on all occasions in the presence of and under examination by the judge, can, on each occasion, be ascertained: whereas, under the existing technical system, the rule being framed, without the possibility of knowing anything of the distinguishing circumstances of individual persons and things, the necessary consequence is — that, in a vast majority of instances, the convenience of individuals, some or all, is made the subject-matter of a needless and reckless sacrifice.

34. That, all judicatories being sitting every day in the year without intermission, evidence, in so far as indication of its existence has been afforded by the applicant, when admitted as pursuer, be, in such order as in each suit shall be indicated by the exigency of the individual case, from each source, as soon as obtainable, called for and elicited: and this without distinction, as between co-pursuers, co-plaintiffs, defendants, and extraneous witnesses on both sides.

35. That to the institution of *security-finding* in general, and that of sponsorship, or say *auxiliary bondsmanship*, in particular, — be given the whole extent of the application and good effect which the nature of things allows to be given to them.

36. That, accordingly, all the sorts of *occasions* on which, and all the *modes* in which, it is capable of being employed, be looked out for: — for the purpose of employing, on each individual occasion, that mode which may be employed with the most advantage to all interests concerned.

Of *modes* of such security capable of being employed, examples are the following: —

I. Intervention of *bondsmen*, styled *auxiliary bondsmen*, one, two, or more, according to the magnitude of the sum regarded as requisite, and their capacity of contributing to make up such sum; each individual contributing such part as his circumstances enable him, and his inclination disposes him, to contribute: as to the party's joining in the bond, it would, under the here proposed system, be a needless and useless ceremony, the judicatory having his property as effectually at command without it as with it.

II. *Deposit* of *money* by the *party* in the hands of the registrar of the judicatory.

III. *Deposit* of *money* by these same *bondsmen* in the hands of the registrar.

IV. *Deposit* of any *moveable* subject-matter or subject-matters of property of considerable value in small compass, in the hands of the registrar.

V. *Impignoration*, or say *pledging*, of any *immoveable* or any incorporeal subject-matter or subject-matters of property belonging to any such auxiliary bondsmen.

VI. With *consent* of the party, *ambulatory confinement* of his person, he staying or going where he pleases, so it be in the custody of a person or persons appointed for that purpose.

VII. Under the same condition, stationary confinement in a *place* other than a prison.

VIII. At the instance of the party himself, imprisonment. Notwithstanding its afflictiveness, it may happen to this security to be necessary; for example, in a case where, security being deemed necessary to be exacted of the other party, and the finding of that security highly afflictive, the party in question is by strangership, relative indigence, or bad character, disabled from finding any security less afflictive.

37. Of *occasions*, requiring that such security be exacted, examples are the following: —

I. At the charge of a defendant, need of security to a plaintiff, the defendant being on the point of *expatriating* either his person or his property, or both, and the value of what is demanded at his charge bearing a large proportion to his property: at the same time that, supposing the demand groundless, or the security needless, the wrong done to the defendant, if either his person or his property were

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detained, might be ruinous to him: as, for instance, the whole of it being on the point of being expatriated on a commercial speculation in a vessel engaged by him for that purpose, and he about to embark for the purpose of superintending the disposal of such his property.

II. On the occasion of the establishment of a mode of *intercourse*, as above, with the judicatory during the continuance of the suit, want of trust-worthiness may produce the need of the exaction of security, at the charge of the individual in question.

III. Whenever, for any purpose, it may be requisite that security be exacted at the charge of a party on either side of the suit, need may also have place for the exaction of a counter-security, at the charge of the party applying for it.

Note here, that of the infinite variety of *occasions*, on which the need of *security-finding* is liable to have place, the practice of *bailing* is but one, and on each occasion the chances of its being the least inconvenient one are as infinity to one.

38. That, in regard to *evidence*, whether the *source* be *personal*, *real*, or *ready written*, no distinction be made between *parties* and *witnesses* who are *not* parties — say *extraneous witnesses*; that is to say, that from both, it be alike receivable and exigible: seeing that so it is in the existing *small-debt courts*, in the aggregate of which more suits have place than in all other courts put together; in regard to exaction, penal suits not excepted: seeing that, in the equity courts, such exaction has place, though, by means of it, the richest proprietor may be divested of the whole of his property; and instances are known, in which, rather than submit to such a loss, men have sustained imprisonment for life.

39. That the mode employed in the elicitation of evidence (under which appellative is included every averment made either by an applicant or by a party on either side) be, in each individual suit, according to the demands of that same suit, in respect of general convenience, one or more of the three modes following: to wit — 1, The *oral*, elicited in the originating judicatory; 2. The *oral*, elicited in another, say a *subsequential* judicatory, to which, for the convenience of a party resident in the territory thereof, the inquiry is, for the purpose of his examination, transferred; 3. The *epistolary*, by means of interrogations approved of by the judge of the originating judicatory.

40. That no response in the epistolary mode be received, otherwise than subject to the eventual examination of the respondent in the *oral* mode, at any time, should demand have place for such examination, in the judgment of the judge,

41. That, instead of being applied, as in equity practice, without necessity, and to the exclusion of the *best*, that is to say the *oral* mode, the *epistolary* mode of eliciting evidence be no otherwise employed than for one or other of two causes: namely — 1. Either for exclusion of preponderant evil in the shape of delay, expense, and vexation; 2. Or of necessity, elicitation in the oral mode being impracticable: as, for instance, where at the time in question the residence of the person addressed is in the one or the other of the sister kingdoms, in a distant dependency, or in the dominions of a foreign state: in all which cases the expense and delay of commissioners sent to the places in question will thus be saved.

42. That, for avoidance of perjury, and abolition of the encouragement given to falsehood, by the distinction between statement upon *oath*, and statement to which, though made without oath, efficiency, equal to that which is given to statement upon oath, is, as above shown, in many cases given, — no oath shall, on any judicial occasion, or for any eventually judicial purpose, be in future administered. But that every statement made on any such occasion, or for any such purpose, shall be termed an *affirmation*, or *asseveration*; and that, for falsehood in respect of it, whether accompanied with evil consciousness, or say *wilfulness*, or with temerity, or say culpable heedlessness, any such punishment purely temporal shall be appointed, as the nature of the case may be deemed to require: consideration in each case had, of the nature of the offence, to the commission of which such falsehood shall have been deemed subservient: and that, as often as, in the course of the suit which gave rise to the falsehood, — all the evidence that can bear upon the question of falsehood has been brought forward, conviction and punishment may have place, even on the spot, without the formality and expense of an additional suit on purpose, just as, at present, in the case of an act, styled an act of *contempt*, committed in the face of the court.

43. That, for rendering substantial justice, and for avoidance of needless multiplicity of suits, statements, and other evidence, relative to the whole of a series of wrongs, be elicitable on the occasion of one and the same application: such satisfaction, in so far as it is in a pecuniary shape, being adjusted to the state of pecuniary circumstances on both sides: this, where it is on one side only, that complaints have place: and that, where there are two parties, between whom, for a greater or less length of time, a quarrel has had place, each, in the way of recrimination, may elicit evidence of divers wrongs, of different sorts, at different times, from the other, in which case, what, on the aggregate, on the score of

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compensation, is due from the one, forms a *set-off* to what is due from the other, — satisfaction be accordingly allotted for the balance: as also, on one of the parties, or both, if, in the judgment of the judge, the case requires it, — a fine be imposed for the benefit of the public, on the score of the portion of the time of the judge and his subordinates, which, at the expense of the public, has thus been occupied.

44. That, with the exception of suits in which, by reason of their comparative unimportance, it is purposely left unpreserved, — all evidence, elicited in the *oral* mode, shall, under the care of the *registrar* of the judicatory, be minuted down as it is uttered: and that of this, with the addition of any such evidence as may have been adduced in the *ready-written* form, or elicited in the *epistolary* form, be constituted the main body of the document, which, under the name of the *record*, shall, in case of *appeal*, be transmitted from an immediate to the appellate judicatory: and that, for this purpose, the mode in which the minutations are made, may be that in which, under the name of the *manifold* mode, is already in use, and in which legible *copies*, say rather *exemplars*, to the number of eight or more, are written at once: whereby all danger of error, as between one such exemplar and another, and all expense of the skilled labour requisite for revision, are saved.

45. That, towards defraying the unavoidable costs, in the case of persons unable to defray them, — a fund be established, under the name, for example, of the *Helpless Litigant's Fund*.

46. That all factitious costs being struck off, and unavoidable costs transferred on the revenue, — and professional assistance, in so far as needed, provided gratuitously as above, — *fines*, or say *mulcts*, be imposable on any party in proportion as he is in the wrong; which imposition may have place in a degree of amplitude, far beyond any which, under the existing system, would be endurable, if added to the burthen at present indiscriminately imposed under the name of *costs* on the injurer and the injured: and that of these fines the produce may constitute the basis of the *Helpless Litigant's Fund*: in the case of the wrong-doer, the requisite distinction being all along made, between evil consciousness and rashness, or say culpable heedlessness, not accompanied with evil consciousness: and that, for any incidental misconduct manifested in the course of the suit, such fines be moreover imposable, even on a party who, on the main point, is in the right: so also on an extraneous witness: not forgetting, however, that where the case presents to view a party specially injured, no such fine can with propriety be imposed, unless more be needed on the score of punishment, than is due on the score of compensation: forasmuch as the burthen of compensation produces, as far as it goes, the effect of punishment: the effect — and, commonly, even more than the whole of the effect: forasmuch as, by the consideration that from his pain his adversary is receiving pleasure, will naturally be produced a chagrin, which cannot have place in the case when the profit goes into the public purse.

47. That, as well of the judiciary establishment code, as of the judicial procedure code, the language be throughout such as shall be intelligible to all who have need to understand it: no word employed but what is already in familiar use, except in so far as need has place for a word on purpose: and that, to every such unavoidably-employed word, be attached an exposition, composed altogether of words in familiar use: and that, throughout, the *signs* thus employed be, of themselves, as characteristic as may be of the *things* signified.

Now for the general character of the two opposite systems: that which is in existence, and that which is herein, as above, humbly proposed as a succedaneum to it.

Behold first the existing system:—

Justice, to Judge and Co. a game; Judge and Co. the players: stake, in different proportions, the means of happiness possessed by the aggregate of all litigants.

Established a universal chain of tyrannies: established, by power to every individual to tyrannize over every other, whose circumstances are to a certain degree less affluent: in every case, instrument of tyranny, utter ruin: utter ruin, by the enormity of the expense.

Alike well-adapted to the purpose of the oppressor, that of the depredator, and that of him who is both in one, is this same instrument. This in hand, a man may oppress, he may plunder, the same person at the same time.

Considered with reference to its real ends, could any more accomplished aptitude — considered with reference to its pretended ends — could any more accomplished inaptitude be obtained by a premium directly offered for the production of it?

So much for the existing system. On the other hand, such, as hath been seen in brief outline, is the system of arrangements dictated by a real and exclusive regard for the happiness of the community, in so far as it depends upon the application made of the power of judicature. We invite the well-intentioned, — we challenge the evil-intentioned, — to elicit and hold up to view, all proofs and exemplifications of its inaptitude. Whatsoever alleged imperfections have been

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found in it, will of course, in case of adoption, be removed by the constituted authorities. But, considered as a whole, we cannot but flatter ourselves, that, in quality of a subject-matter of adoption after such amendments made, no arguments will be found opposable to it, other than ungrounded assertions, vague generalities, narrow sentimentalities, or customary and already exposed fallacies.

Now for an apology: an apology for the freedom with which the vices of the existing system have been subjected to exposure, and its utter inaptitude for its professed purpose, we trust, demonstrated. In this inaptitude, coupled with the aptitude of the proposed succedaneum, will be found the best, and we humbly hope a sufficient apology for this boldness, how striking soever the contrast it forms with accustomed usage.

Another apology we have to make is, that which is so undeniably requisite for the freedom with which, in addition to the character of the system, that of the class of persons concerned in the administration of it is held up to view. For this liberty, our plea is that of indispensable necessity. For, unhappily, the state of manners considered, — on their part, at any rate on the part of the great majority, it is not in the nature of man that this or any other system should be received by this class, otherwise than with opposition, and that opposition hostile and strenuous in proportion to the serviceableness in the thus exposed system, and the disserviceableness of the here proposed system, to their respective real or supposed particular interests: on which occasion, what again is but too natural is, that, beholding with serenity, and even delight, the torments out of which, and in proportion to which, their comforts are extracted by it, the unction of their panegyrics will continue to be poured forth upon the thus exposed system, in proportion to its need of them, which is as much as to say, in exact proportion to its mischievousness.

Thence it is, that the doing what depended upon us, towards lowering, as far as consistently with justice may be, the estimation in which their authority is held by public opinion, — became, how painful soever, an indispensable part of this our arduous enterprise: — assured as we could not but be, of its finding that so influential authority in its whole force, with all its weight, on every point, pressing down upon it.

Of an imputation which will of course be cast upon the line of argument thus taken by us, we are fully aware. This is — that the weakening the force and efficiency of the whole power of the law is a natural effect — not to say the object — of these our humble endeavours.

To this charge we have two answers: —

One is — that, from this cause, no such consequence will really follow: the other is — that while, by this same cause, the power of the law will not be diminished, the security for its taking its proper direction will be increased,

First, as to the apprehension of the evil consequence. Produced by a superficial glance, natural enough this apprehension must be acknowledged to be: by a closer view, it will, we trust, be dispelled.

That which produces the effect aimed at by the law — what is it? Is it anything other than the expectation, that, on contravention, the inflictions at the disposal of the functionaries in question will accordingly be applied to the contraveners? But of any such infliction, when the decree for it has passed, will the application depend upon public opinion? No, surely: on no such fluctuating basis does public security rest: the persons on whom it depends for its efficiency are, in the first instance, the judges themselves; in the next place, in case of need, the supreme authority, with the whole force of the country in its hands. When a judgment has been pronounced, is it in the power of this or that individual or individuals, in any number whatsoever, to prevent the execution of it? No, assuredly.

Now, as to the desirable good consequence. This consists in the giving strength to the limitative check, applied to the power of the judge, by the power of *public opinion* — sole source from which, on the several individual occasions, this so necessary and from all other hands unobtainable service can be received. Yes; we repeat it — sole source. True it is, that, in theory, and by the practice of times now past, *impeachment* is presented in the character of an appropriate remedy: hands by which it is applicable, those of the Honourable House. But, in fact, only in appearance is it so. On no other condition than that of leaving — and that to an indefinite degree — inadequately done, or even altogether undone, its superior and altogether indispensably *legislative* duty, — could be undertaken by the House, this judicial, and, as such, inferior and comparatively unimportant function. Witness the testimony so amply afforded by experience: witness the Warren Hastings impeachment: witness the Melville impeachment. Take away the check applied by the tribunal of public opinion — here then is the power of the judge, nominally and theoretically controuled, really and practically uncontrouled: and of this same uncontrouled power, what sort of use has been made, and, so long as it continues upon its present footing, cannot but continue to be made, has, we humbly trust, been sufficiently seen already.

Well then: of the power of public opinion in consequence of the information hereby afforded to it, what is the application reason-

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ably to be expected? The universal power of the whole country — will it employ itself against itself? But, the lower the trustworthiness of these same functionaries is in the scale of public opinion, the less efficient, on each occasion, will be capable of being made its resistance to this indispensable check: — the only one, as hath been seen, from which any controul can be experienced by it.

Undangerous in perfection, gentle in perfection, continually improving, self-improving, — what other power can be so completely incapable of being abused as this? Only by the check applied by it can the efficiency of a judge's sinister leanings be lessened: only by the force of reason can the direction taken by this guardian power be determined.

As to any such fall as that just mentioned, — whatsoever may be the sensation produced by it, — in their predecessors and themselves, these functionaries may behold the original authors whom they have to thank for it. Instead of being what it has ever been, and continues to be, and never can but be, — had the use made of their power been the direct reverse of what it has been, — no such state of the public mind, — no such sensation in the individual mind, could have had place.

While speaking of this same downfal, it is not without unfeigned regret that we can contemplate the hurt, which, by this our humble petition, cannot but in a greater or less degree be done to the interests and feelings of individuals: and this, not only eventually by the establishment of the here proposed system, but actually and immediately by the picture here drawn of the causes by which the demand for it has been produced.

But, well-grounded as these their apologies cannot be denied to be, no reason will they afford why the exertion necessary to the putting an end to the abuses apologized for should in any way be slackened. The surgeon, with whatsoever concern he may behold the sufferings of the patient under the necessary caustic, cannot hold himself exempted by the consideration of them from the obligation of putting it to its use.

Nor yet under these regrets, for this hardship on individuals, is alleviation, independently of that afforded by the contemplation of the all-comprehensive benefit to the public, altogether wanting.

Classes, the interests of which would be affected by the proposed reform, these two: — the professional and the official.

As to the professional class, not to near so great an amount, if to any, as at first view might be supposed, would be the detriment to their pecuniary interests. For, long would it be before their situation could be in any way affected by the change. Suppose the matter already before a committee of your Honourable House: long would it be, before the reforming process would, by a bill brought in in consequence, so much as take its commencement: long, beyond calculation, notwithstanding the utmost possible exertions employed in giving acceleration to it, would be the time occupied in the continuance of that same process: long, even supposing both Houses unanimous in their approbation of the measure considered in a general point of view: and how much further could it fail of being lengthened, by the exertions which it would be so sure of finding everywhere opposed to it — opposed by the best exercised and strongest hands? Such is the length of time during which all such professional men as the bill found already in possession of business would be enjoying the fruits of it, without diminution or disturbance.

So much for that class. All this while, all men who, but for the apprehended fall off, would have engaged in the profession, will have had before their eyes the prospect of it, and the notice and warning given by that prospect. On the other hand, in like manner, will these same eyes have had before them the augmentation (and it has been seen how ample a one) given to the number and value of the aggregate lists of judicial situations. Correspondent will accordingly be the number of those whose destination will, by that prospect, be changed from the indiscriminate defence of right and wrong, in the capacity of professional lawyers, to the pure pursuit of the ends of justice, in the situation of judge. Moreover, proportioned to the amount of this secession would be a further indemnification to those already in the possession of business: so many men whose course has thus been changed, so many competitors removed.

The class upon which, chiefly, the loss would fall, is the *attorney* class. A certain class of suits there is by which, on the present footing, business with its emolument is afforded to the attorney, none to the advocate class: business, for example, begun, altogether without prospect of successful defence, and thence carried through actually without defence: action, for example, with or without arrest for indisputable and certainly procurable debt. Barristers not deriving any profit from the present existence, would sustain no loss from the cessation of these actions.

But as to the length of the interval before commencement, as also the exclusion put upon competition, — in these advantages the attorney class would possess an equal share.

As to the official class, nothing whatever in a pecuniary shape can any of its members have to apprehend from the change: from all such apprehension they stand effectually secured by the application so constantly made of the *indemnification* principle, to the interest of men of their order at any rate, whatsoever ground of complaint, on this score, may, in

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but too many instances, have been felt by functionaries belonging to lower orders.

After all, of all regrets from such a source the complexion would be, what it would be if the sufferings, instead of these, were those of medical men from improvements made in the state of general health and longevity: improvement such as that made by the substitute of vaccination to inoculation: imaginable improvement by discovery made of a never-failing specific, for example, against the ague, the rheumatism, the gout, the stone, the cholera morbus, the yellow fever, the plague, or by the universal drainage of all pestiferous marshes.

Now, as to the effect producible on estimation, and thence on feelings. Altogether unavoidable, and indispensably necessary to the establishment of the everlasting good, upon the all-comprehensive scale on which it is here endeavoured at, — has been the production of the transient evil upon this comparatively minute scale. Before the running sore, kept up at present under and by the existing system, could with any the least chance of success be endeavoured to be healed, it was necessary it should be probed, and the sinister interest in which it has had its cause, brought to light and held up to view.

Now, in the case of the class of persons unavoidably wounded, so far as regards damage to estimation, are alleviations, and those very efficient ones, by any means wanting? In the first place, comes the consideration, that what is important to them, so far from being peculiar to them, is nothing more than what has place incontestably and confessedly in all other classes of men whatsoever. In the minds of the men here in question, indeed, but no otherwise than in those of all other men, with the exception of the heroic few, prevalence of self-regard over all other regards, and this on every occasion, is among the conditions of existence. Place all regard for the interest of A in the breast — not of A but of B, and so reciprocally, the species cannot continue in existence for a fortnight. True it is, that in this or that heroic breast, on this or that occasion, under the stimulus of some extraordinary excitement, social feeling, upon the scale of such an all-embracing scale, may, here and there, be seen to tower above regard for self: but to no man can the not being a hero be matter of very severe reproach. When, therefore, as here, interest from the very first — interest real, or (what comes to the same thing) imagined—has been made to clash with duty, sacrifice of duty is, with exceptions too rare to warrant any influence on practice, sure, and as such ought to be calculated upon, and taken for the ground of arrangement and proceeding, in all political arrangements.

Men are the creatures of circumstances. Placed in the same circumstances, which of us all who thus complain, can take upon himself to say or stand assured — that, in the same circumstances, his conduct would have been other and better than that which, on such irrefragable grounds, he is thus passing condemnation on, and complaining of?

Of the existing race, whatsoever may be the demerits, they have at once, for their cause and their apology, not only the opposition in which, in their instance, interest has been placed with reference to duty, but the example set them in a line of so many centuries in length, by their predecessors; and in ancestor worship, how this our country has at all times vied with *China*, is no secret to any one.

The concluding observation, how small soever may be the number of the individuals to whom it will be found to have application, is — that, to the imputation of hostility to the universal interest, by perseverance in the preference given to personal interest, it depends upon every man to remain subject, or liberate himself from it, as he feels inclined: and the more powerful the temptation, the more transcendent will be the glory of having surmounted it: and whatsoever may have been the strenuousness and length of his labours in the augmentation of the disease, ample may be the compensation and atonement made, by his contributions to the cure of it.

Such are the considerations, from the aggregate of which our regrets for the manner in which the feelings of the individuals in question cannot but be affected, have experienced the diminution above spoken of. But were those regrets ever so poignant, our endeavours for the removal of the boundless evil of the disorder would not be (for, will anybody say they ought to be?) in the smallest degree diminished, by the consideration of the partial evil thus attendant on the application of the sole possible remedy: assuredly ours will not; nor will, as we hope and believe, the accordant endeavours of the great majority of our fellow-subjects.

On this occasion, a circumstance to which we cannot but intreat the attention of the Honourable House, is the uniform and almost universal silence, in which, by professional men, in bringing to view, or speaking of proposed reforms or meliorations, this universal cause of all the wrongs and sufferings produced in the field of law, has, as if by universal agreement entered into for the purpose, been, as far as depended upon them, kept out of sight. Of the several elements of appropriate aptitude, as applied to this case, — intellectual aptitude and active talent are, on this occasion, assumed to be the only ones, in which any deficiency in the appropriate aptitude of the law itself in any part, has ever had its source: the only ones on which the degree of this same aptitude depends: the only ones,

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of a deficiency in which there can ever be any danger. As to appropriate moral aptitude,—on every such occasion, exclusively intent on the interest of the public, without so much as a thought about their own interest, in any respect, and in respect of profit in particular, —that all persons in this department sharing in the possession of power, and with them all persons engaged in the exercise of the profession, are, and at all times will be, — this is what is tacitly, but not the less decidedly, assumed: assumed? and with what reason? With exactly the same as if the assumption were applied to all persons engaged in trade. Now then, in this state of things, while on every occasion universally thus referred to the wrong cause, what can be more impossible, than that the disorder should ever receive from the sole true *recipe*, deduced from the knowledge of its true cause, its only possible remedy? Vain, however, how extensive soever,—vain at any rate, so far as regards us your petitioners,—will henceforward be this so decorous and prudential silence, the nature and magnitude of the mischief, and the nature of its cause, being at length alike known to us.

As to this silence, the decorum attached to it notwithstanding, we humbly trust that in the Honourable House it will not any longer be maintained: for so long as in that sole source of appropriate relief it has continuance, so long will all possibility of effectual remedy be excluded; and so long as the disorder continues unremoved, by no silence anywhere else can our ears be closed, or our tongues or our pens be stopt.

Yes; as to us your petitioners, the film is now off our eyes: thus wide open are they to the disorders of which we complain, and to the urgency of the demand for the remedy, of which, at the hands of the physicians of the body politic, we thus humbly, but not the less earnestly, entreat the application.

To some it may be matter of no small wonder, how such sufferings, as at all times have been experienced, should at all times have had for their accompaniment, such almost universal patience. But, in this case, patience has been the natural fruit of ignorance; the language in which these torments of the people have in this case had their instrument, being about as intelligible to the people at large, as is the gibberish spoken by the race of gypsies.

We beseech the Honourable House to ask itself whether, of the enormities above brought to view, one tenth would not suffice to justify the practical conclusion here drawn from them?—whether, of a system thus in every part repugnant to the ends of justice, and injecting into every breast, with such rarely-resistible force, the poison of immorality in so many shapes, the mischief can be removed otherwise than by the entire abolition of it, coupled with the substitution of a system directed to those ends, and pure from all such corruptive tendency?—whether the inaccessibility of justice be not of the number of those enormities?—and whether the House itself will, henceforward, be anything better than an enemy to the community, if with eyes open, and hands motionless, it suffers that inaccessibility to continue?

For our parts—respectfully, but not the less earnestly, we conclude, as we began, with the continual, and, till accomplishment, never-about-to-cease cry—"Holy! Holy! Holy! Justice! accessible Justice! Justice, not for the few, but for all! No longer nominal, but at length real, Justice!"

ABRIDGED PETITION FOR JUSTICE.

To the Honourable the House of Commons in Parliament assembled.

1. JUSTICE! justice! *accessible* justice! justice, not for the *few* alone, but for *all!* No longer *nominal*, but at length *real*, justice!—In these few words stand expressed the sum and substance of the humble Petition, which we, the undersigned, in behalf of ourselves and all other his Majesty's long-suffering subjects, now at length have become emboldened to address to the Honourable House. The case we accordingly take the liberty to state, followed by a prayer, humbly suggesting a plan for the removal of the grievance, is this:—

2. That, of the *expense*, without which, application to judges, for the *service* which, as such, they are appointed to render, cannot be made, nor if made continued, the effect is such—that, in cases called *civil* altogether, and in cases called *penal* to a vast extent, justice is not only sold at a dear price to all the few who have wherewithal to purchase it, but utterly denied to all who cannot; and that those who are thus oppressed are thus subjected to wrong, in all shapes, without redress.

3. That the *delay* is such, that, in many cases, in which, under a proper system, a few minutes would suffice,—and even under the system established does in cases to a narrow extent actually suffice—more than as many years elapse before a man can obtain posses-

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sion of what, at the end of that interval, are universally seen to have been, and to continue to be, his manifest and indubitable rights.

4. That, while thus unapt for *redress* of wrong, it is exquisitely well adapted for the *commission* of wrong: for, such is the mode in which commencement is given to suits, that is to say, without security given for compensation for wrong if done by means of the suit, that, without so much as imagining himself to have any just ground of demand whatsoever — any man, who is able and willing to pay a certain price, may, as we shall show, stand assured of effecting the utter ruin of any one of nine-tenths or ninety-nine hundredths of the whole body of the people.

5. That this state of things has for its *cause* the undeniable fact, — that, from first to last, the interests of all persons concerned in the administration of justice have been in a state of opposition, as direct as possible, to their acknowledged duty, and the interests of the community.

6. That this oppositeness had for its original cause the *penury* under which government at that time laboured; it not having, in its then existing state, wherewithal to pay salaries; and being thereby laid under the necessity of allowing the functionaries of justice to exact, for their own use, payment in the shape of *fees:* payable for processes carried on in the course of the suit: for processes carried on,— that is to say, either for instruments *(written instruments)* communicated, or thereby or otherwise, *operations* performed.

7. That, under and by the influence of the sinister interest thus created — has been generated the existing system of judicial procedure: a procedure, having for its ends — instead of the ends of justice — the swelling, to its utmost endurable amount, the evil composed of the expense, delay, and vexation, for the sake of the profit extractible out of the expense, to the use of the several partners in the said sinister interest: to whom, taken in the aggregate, may accordingly, without injurious misrepresentation, and with instructive and beneficial application to practice, the style and title of Judge and Co. be allotted.

8. That though, by a late act, in the case of the judges of the supreme Westminster-hall courts, salaries have been substituted to fees, — yet, this substitution, not being extended to those their subordinates, of whose situations they have the patronage, the comparative *sinister interest*, in unabated efficiency, still *continues: gift* being still allowed; and gift being, in all cases, a source of proportionable benefit to the giver: in some cases of even greater pecuniary profit than *sale* is: as in the case of the gift made of the next presentation to an ecclesiastical benefice, by the patron to his son: and that, even were this same supposed remedy effective against further increase of the grievance — which, however, it is not in its nature to be — still the system of factitious expense, delay, and vexation, offspring of the sinister interest, would remain as it does in all its mischievousness.

9. That the boundless weight of human suffering thus imposed is not, in any part of it, as some suppose, natural and unavoidable, but in the whole artificial: as also in the whole removable; as, in and by the suggestion contained in the prayer of this our humble petition, we will humbly show.

10. That, amongst others of the *devices* which, in consequence, and by means, of the Norman conquest, have been contrived and employed, for the compassing of this same sinister object, the results are these which follow: — devices, some of them first employed at and during that same period, others at different successive periods, grafted on, or employed in fertilizing, the first devised radical ones.

11. — I. *Device the First — Exclusion of the Parties from the presence of the Judge.*

This at the very outset of the cause, down to the last stage: that thereby, parties in general, and the most opulent in particular, may be, as they accordingly are, necessitated to employ in all, even the most simple cases, as substitutes, a class of men whose profit rises in proportion to expense, delay, and vexation; and who, exercising their profession under the dominion of the sinister interest, which they have in common with that of the judges, have the benefit of their support towards the reaping and increase of this same sinister profit: a master device this, serving as a necessary instrument of the employment given to most of the hereinafter ensuing devices.

12. A collateral mischief is — that, by this exclusion, the door is shut against evidence from that which is commonly the most instructive source, and thereby decision necessarily given in favour of the side in the wrong, in every case in which no other than the thus excluded evidence is obtainable. This in some cases: while, in other cases, by a glaring inconsistency, the thus excluded evidence is admitted.

13. In particular, in the judicatories called *equity courts*, in which the plaintiff is admitted, in and by his bill, to extract evidence, through the medium of the pen, from the bosom of the defendant: in which state of things, the defendant, — unless his professional assistants are deficient in appropriate aptitude — moral, intellectual, or active, — slides in, in and by his answer, whatsoever averments present, in

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his and their joint opinion, a probability of operating in favour of his side.

14. Not but that, for two distinct purposes, — in so far as may be without *preponderant evil* in the shape of delay, vexation, and expense, is necessary to justice the thus excluded attendance: — 1. For bringing to view all facts which are of a nature to operate in favour of any party on either side; 2. To serve as a check upon the sinister interest, whereby their respective professional assistants are prompted, as above, to swell to its maximum that same *evil*, for the sake of the profit extractible out of the expense.

15. Note also that, so far as it can be effected without preponderant evil as above, not less needful is this attendance on the part of *principals*, or say intended *benefitees*, (for example, wives, children and their offspring, wards, and members of associated companies,) for the protection of their interests, against misconduct on the part of their respective *trustees:* that is to say, husbands, fathers, and other progenitors, guardians, and agents of various denominations; with or without collusion with their several professional assistants in the suit.

16. — II. *Device the Second — Language unintelligibilized.*

Instead of the mother-tongue of the parties, the language, originally employed in word-of-mouth discussion, being the language of the conquerors; that is to say, *Norman French:* and the language, employed in written instruments, the *Latin*.

17. Thence was created the necessity of employing these so little trustworthy trustees, not only as assistants and advocates, but even as interpreters between the *English-speaking* parties and the *French-speaking judges*.

18. Out of these two foreign languages, in conjunction with the mother-tongue, has been made up the jargon, by which, to so great a degree, the same continuance has been given to the same design; — the translation, at length made by order of parliament, notwithstanding: whereby, to so great an extent, false and delusive lights have been substituted to total darkness.

19. — III. *Device the Third — Written Pleadings worse than useless, necessitated.*

By this means, justice was *denied* to all who could not afford the expense of hiring the manufacturers of this sort of ware — sold to all who could and would be at the expense: and, even now, such continues to be the case: and, being paid in proportion to the quantity, thus it is, that, by this sinister interest, they stand engaged to give every practicable increase to it.

20. Now then, as to the supposed necessariness and usefulness of these same instruments. Really necessary are, and in every case, on the plaintiff's side, — statements, — 1. Of the *demand* made by him; 2. Of the *ground* of it in point of *law;* 3. Of the ground of it in point of *fact;* 4. Of the evidence by which it is supported; 5. Of the *persons* on whom the demand is made. These are — 1. In the first instance, as above — the *defendant;* 2. On failure of compliance on his part, by performance of service demanded at his hands — the judge; the service demanded at his hands then, the correspondent service, rendered by bringing about that which was demanded at the charge of the defendant, or what is regarded as an equivalent to it. In like manner, in case of non-compliance on the part of the defendant, correspondent statements in justification of such non-compliance.

21. Of all this matter, what is there in these same written pleadings? Answer — Really and distinctly expressed, nothing: nothing but a confused and redundant, yet imperfect hodge-podge, composed of more or less of it.

22. Moreover, for procuring custom, at the hands of individuals who know they are in the wrong, — as well as for giving increase to the quantity of jargon which parties are constrained to buy, — a distinction has been made between *pleadings* and *evidence;* and this in such sort, that while, on the one hand, of statements to which the name of *evidence* is given, *punishment*, under the name of *punishment*, is, in case of wilful falsehood, made the consequence, — on the other hand, to those to which the name of *pleadings* is given, no such consequence is attached: and thus it is, that, to all such left-purposely-unpunished falsehood, allowance, or say licence, is given: at the same time, to these same masses of falsehood, which are not so much as pretended to be entitled to the name of evidence, is given a surer effect than to any the best and most satisfactory evidence: since, when the party on either side has come out with one of these pleadings, the party on the other side, if he fails to encounter it with a correspondent mass, is *visited* with the loss of his cause: and thereby with a suffering, which may be any number of times as great as that produced by punishment under the *name* of *punishment* would be: and thus it is, that the licence so given to mendacity operates as encouragement to, and reward for, the commission of it.

Now then, this same failure, when it takes place — what has it for its efficient cause? His being in the wrong, and at the same time conscious of being so, answer Judge and Co.: if both these fail, his inaction is *circumstantial* evidence; and to this we give the effect of *conclusive* evidence.

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23. Such is the conclusion: now as to the justness of it. Not to speak of others, — one circumstance which the failure is not less likely to have had for the efficient cause is — want of wherewithal to pay for this same thus necessitated mass of surplusage: and, the greater the quantity of it, the more probable this fulfilment of the dishonest suitor's wishes: and thus it is, that, by continuance given to the length of the mass, any man may make sure of consigning to utter ruin any other man, whose circumstances are to a certain degree less affluent: and, under the name of justice, the faculty of oppression is sold to the best bidder.

24. Addressed to the supporters of the existing system, follow a few plain questions: —

If, in relation to any point, it were on any occasion your wish to learn the truth of a case of any sort from a child of yours, or from a servant of yours —

1. Would you refuse to *see* him?

2. Would you send him to, or keep him at, a *distance* from you?

3. Would you insist on his not answering otherwise than *in writing*?

4. Would you, on the occasion of such his writing, *insist* on his coming out with a multitude of *lies*, some *stale* and notorious, others *new* and out of his own head?

5. Would you so much as *consent* to his mixing up *false* information, in whatever quantity he chose — and *that* in an undistinguishable manner — with whatsoever true information it was that you had need of?

6. Would you establish an interval of four or five months' forced silence, between statement and statement, question and answer, or one answer and another?

7. Would you take any such course, if you were acting as *chairman of a House of Commons committee*, making inquiry into the state of things in relation to any subject, for the information of the *legislature*?

8. Would you, if acting in the character of a *justice of peace*, whether singly, or as chairman, at a meeting of a number of justices of the peace, sitting in special sessions, and making inquiry into the matter of a question of any sort, civil or penal, coming within your competence?

25. Well, then: this, however, is, all of it, the exact description of what has place, as often as the process of delivering *written pleadings* is carried on; carried on, as it is, under the eye and by order of all the judges: and this, as well in the equity courts as in the common-law courts. This is what, in the common-law courts (to go no higher,) has place from beginning to end; has place until the suit reaches the jury-box: — not to go along with it any further.

26. Now, then, on the part of those by whom this was the course in which judicial inquiry was ordained to be carried on, can you, now that that course is thus laid open to you, — can you for a moment suppose that *justice* was ever the end in view? Can any man of common sense suppose it? Can any man of common honesty declare himself to suppose it? Can it really be believed by any man, that dispatch is promoted by an inexorably *standing still* for four or five months?

27. IV. *Device the Fourth — Mendacity licensed, rewarded, compelled, and by Judge himself practised.*

Of the manner in which, by and for the benefit and profit of Judge and Co., falsehood has begun and continues to be *licensed*, *rewarded*, and on some occasions *compelled*, it has been necessary to give some intimation under the head of *written pleadings*; falsehood, wilful or not, as it may happen, on the part of the *utterers*, wilful at any rate on the part of the judges — the *suborners*. Follow, under the present head, instances of *compulsion* more manifest and avowed, as also of the *practice* of it by themselves.

28. First, as to *compulsion*. In the proceedings of the courts styled *courts of equity*, in contradistinction to courts of *common law*, it is — that features of *compulsion* are in a more particular degree prominent. After the process which has the effect of a *summons* — the instrument, with which the suit begins, is a paper called *a bill*, commencing with a *case*, or say a *story*, and continuing with a quantity of *interrogative matter*, by which *answers* are called for: answers, to a string of *questions*, grounded on the several *statements*, or say *averments* or *allegations*, contained in the case. To these averments is given, on this occasion, the name of *charges*.

29. Now then, of this same *case*, — what is the composition? Falsehoods, in a more or less considerable proportion, it cannot but have; and in the larger proportion it commonly has. Penalty, on non-insertion of them, refusal to impose on the defendant the obligation of giving answers to the question; in which case, they will not be of any service to the plaintiff's purpose; they will not be contributory to his obtainment of his right: the evidence sought for by them at the hands of the defendant remains unelicited.

30. Seat and source of the falsehood, this: Into the composition of the *case* or *story*, enter commonly two distinguishable *parcels* of alleged facts, all supposed to be *relevant* to the matter in question, and *necessary*, or at any rate *conducive* to the purpose of constituting an adequate ground for the demand made at the charge of the defendant, by this same instrument of demand: object of it, a *service* in some shape or other, at the hands, and at the charge, of the defendant; and,

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eventually, in default of compliance on the part of the defendant, the correspondent service at the hands of the judge; namely, the production of such compliance, or some other service regarded as an equivalent for it.

31. Contents of one parcel of these same facts, such of them as, without any information from the defendant, are (so the plaintiff conceives) known to him (the plaintiff,) as also to some other person or persons, regarded by him as having had perception of them, and being able and about to be willing to declare them: or, at any rate, as being in some way or other in his power to make proof of: this, in whatever degree of *particularity* is necessary to constitute the requisite ground: — call these the *already known* facts. As to this parcel, all that is wanted at the hands of the defendant, is *admission:* seeing that by this, the need of application to any other person for the purpose of *information*, will of course be superseded.

32. Contents of the other parcel, such supposed facts as, in contradistinction to the foregoing, may be styled *unknown* or *sought-for facts;* sought, to wit, at the hands of the defendant: the case being, that, for making proof of them, *information*, such as it is in his power to afford, and perhaps in his alone, is regarded as requisite: in relation to these facts, all that, in the plaintiff's mind, in a form more or less particular and determinate, has place, being a *conjecture*, or say *suspicion*, of their existence.

33. Now then, as to these same *sought-for facts*,—for what reason is it that by the plaintiff they are thus *sought* for? *Answer* — For this very reason, because they are *not* known to him. Yet, in relation to the facts thus unknown to him, is he obliged to make declaration that they *are* known to him: which declaration is constantly the offspring of the inventive genius of his professional advisers and assistants. Without such false declaration from them — writing in the plaintiff's name, — no information at all will the learned judge suffer to be attempted to be elicited from a defendant. Purport of the rule expressive of the obligation, this: — Every interrogatory must have a *charge* for the support of it.

34. Plaintiff, for example, creditor of a person deceased; defendant his executor. To some amount or other, property in some shape or other, is left by the deceased: but, to what amount, and in what shape, this is what the plaintiff is altogether ignorant of; for information in relation to it — information in such shape as shall constitute an adequate ground for the demand made of the debt—this is what is thus *sought for* by plaintiff, at the charge and at the hands of the defendant. Well then: to a question, asking whether property of the deceased to the amount requisite is in existence, and if yes, what it consists of, and so forth, will a judge compel any answer to be made? Not he indeed: otherwise than *upon condition*. And this condition, — what is it? *Answer* — That, in the bill, a multitude of declarations, or say *averments*, *assertions*, or *statements*, shall be inserted — statements, giving an account more or less particular, of the several above-mentioned *unknown* facts: facts, by the supposition unknown to the very individual, who is thus compelled to assert that he knows them; on which occasion, the learned draughtsman finds himself under the not altogether unpleasant or unprofitable obligation, of bringing to the view of his lordship (who will never see it) a statement of every sort of thing, which it is regarded as possible should in the aggregate mass of the property in question have been contained; and, the richer the quantity of this poetry in prose, the richer the reward to the industry of the firm of Judge & Co. in all its branches.

35. Note, by-the-bye, in the case where no *information* is wanted at the hands of the defendant, the *consequence* of resorting to him, in *this* mode, for *admission*, instead of to a non-party — say an extraneous witness — for information, and thereby for proof. Consequence naturally expected (that is to say, by a man who has never looked into equity procedure) delay and expense saved: for, to the defendant, application (says he) must be made at any rate for payment of the debt. This (continues he) being necessary, when you are about it, add to the demand of the money due, a demand of the information necessary to the proof of its being due: — the information being thus obtained, and from the defendant himself, saved thereby is the delay and expense of the endeavour to obtain it from sources in number and distance altogether indefinite. Such, as to delay and expense, is the economy in appearance. How stands it in reality? *Answer* — In *natural* procedure it would have place; but in equity procedure, what the plaintiff gets by it, if the defendant (being rich enough) so pleases, is — in regard to delay, substitution of years to minutes, and in regard to expense, hundreds or thousands of pounds to shillings.

Is this handwriting yours? Yes, or no? For the answer to a question to this effect, *spoken* by a justice of the peace, less than even a *second* of time would serve; and by an answer in the affirmative would be decided many a suit which, under equity procedure, while questions and answers are *written*, occupies *years*.

36. So much for *licence*, *remuneration*, and *compulsion* of mendacity. Now for the practice of it: practisers, as well as compellers of mendacity — never, for a moment, let it be out of mind, — the judges themselves. *Fiction* is the appellative, by which the sort

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of falsehood, thus by judges coined in their own mint, has at all times been distinguished. Nor was the choice thus made of the appellative a *blind* one. Established they found it in a situation of favour in the public mind, — established by means of the application made of it to the purpose of designating *poetry* and *romance:* and thus it was, that, into a portion of the favour, associating with those always agreeable and sometimes useful productions of the imaginative faculty, they thus contrived to let in these constantly not only useless, but enormously mischievous ones. So much for the nature of this species of poetry.

37. Now for some accompaniments belonging to it. In every case, of the utterance given to these falsehoods, *evil consciousness*, — styled in their language *mala fides*, — has on their part been an accompaniment: *fraudulent obtainment*, the *object:* subject-matter of the obtainment, money: to wit, either immediately, that is to say, in the shape of *fees*, or mediately, through the medium of power, parent of fees: *persons thus wronged* — in so far as the subject-matter was composed of *money* — the people, in the capacity of *suitors:* in so far as it was composed of *power*, the fellows and competitors of these same judges; as also, in various indirect ways, the *people* again: one way — the being, in the course of the scramble between judge and judge, consigned to imprisonment; and through imprisonment, frequently to utter ruin, as, under the head of *groundless arrests* for debt, will be found distinctly visible. So much for the *morality* of the *practice*.

38. Now as to the *effects* of it. Beneficial effects, none: mischievous effects, these:—

I. Mischief the first and most prominent: depredation and oppression, as above: on each individual occasion, at the charge of *assignable* individuals in the capacity of *suitors*.

39. — II. Mischief the second: *arbitrary power* acquired and exercised. Allow a man to assume the existence of a matter of fact, — of an event, or state of things, by which, supposing it really to have had existence, the assumption and exercise of power would have a justificative cause, — allow him this, what is the power which you do not thus allow him to assume? Of this indirect mode of assumption in preference to the direct, what is the consequence — any diminution of the evil? No: but, on the contrary, an addition to it; namely, the evils produced, as will be seen, by the nature of the *instrument* thus employed.

40. — III. Mischief the third: birth given to a particular instrument of arbitrary power: an instrument to which exposition and exposure have been given elsewhere, under and by the name of the *double fountain*. Mechanism thus alluded to, a vessel invented by *jugglers;* contained in it, wine of two sorts and colours; out of it, come the one or the other at the word of command. Whenever any one of these fictions has been established, thus is it with truth and falsehood. On the individual occasion in question, to this or that sinister purpose of the judge, which of the two is it that is most suitable? Is it the falsehood? Out comes, as usual, the established falsehood, and on this it is that the proceedings are grounded. Is it the truth? Back goes he to the original truth; and on this are the proceedings grounded now. Consequence to juggler's reputation, what? At the hands of the people, anything in the way of censure? Oh no: they look on and stare. Instead of censure, comes in either case praise: on this occasion, as on every other, praise at the hands of Judge and Co. and their dupes, — praise without stint, for everything, be it what it may, which by these same hands is done. Whichever be the ground taken by the decision, praise, appropriate in shape and quantity, stands prepared for the reception of it. Is it the falsehood? Topic of eulogy, strictness of the regard manifested for *established* rules: for the precept expressed by the words *stare decisis*. Is it the truth? Topic — liberality and paramount love of truth and substantial justice: who shall blame the holy love of substantial justice? Of the *double fountain*, one form this: under the head of "*Decision on grounds foreign to the merits*," will be visible another.

41. Thus it is, that, on each occasion, according as it happens to him to feel disposed, disposed by whatsoever motives — whether by corrupt profit to himself, by sympathy or antipathy towards individuals or parties — the judge has it in his power to determine the suit in favour of the one side or the other: and this without any the smallest danger, either of punishment at the hands of government, or so much as censure at the hands of public opinion.

42. — IV. Mischief the fourth. In the minds of well intentioned judges, generated by the incongruous mixture, confusion, thence relative intellectual inaptitude — one efficient cause of misdecision, on the part of the judge, delay in the proceedings, with expense and vexation at the charge of suitors.

43. — V. Mischief the fifth. Of that part of the rule of action, which continues in the aerial shape of *common*, in contradistinction to *statute* law, — the texture vitiated, and the all-persuading and incurable inaptitude increased; and this as well in the *substantive* as in the adjective branch of the law: it being through the machinery of the *adjective* branch, or say the system of *procedure*, that the cobwebs, of which the substantive branch or main *body* of the law, in so far as manufactured by judicial hands, is composed: and thus it is, that, in the minds of the manufacturers, the

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confusion and intellectual inaptitude, and in the work the consequential inaptitude, extends itself over the whole fabric: which by this means is manufactured into an opaque mass, into which the most learned among lawyers have no better than an indistinct insight, and we, the people at large, next to none: at any rate, none such as enables us, of ourselves, to guide our course by it. Witness, in particular, the law of *real property*.

44. — VI. Mischief the sixth. By the example set by a class of persons who, by all these devices, hereinbefore mentioned, and hereinafter mentioned, have hitherto succeeded in rendering themselves objects of almost universal respect and confidence, and by means of those sentiments, in addition to their uncontroulable power, masters of our conduct, the public mind has been, and continues to be, to a deplorable degree, impregnated with the poison of mendacity in this so highly corruptive shape: and thus it is that *demoralization* and *disintellectualization* go hand in hand.

45. — V. *Device the Fifth — Oaths for the Establishment of the Mendacity, necessitated.*

As intimated on the occasion of the *written pleadings device*, mode in which the ceremony of an oath has there been employed as an instrument of mendacity, and, as will be seen, maleficence in so many other shapes, the following: — To assertions, on the occasion of which the ceremony is employed, the distinctive appellation of *evidence* is applied, and to wilful falsehood contained in such assertion, punishment is attached: while, to falsehood, the assertion of which is not accompanied with the performance of this same ceremony, no punishment is attached. In mendacity has been seen an instrument by which such enormous increase is given to the evil produced to suitors, thence to the good produced to Judge and Co. by *written pleadings*. In the ceremony of an oath may now be seen an instrument, by the use of which the production of the mendacity is effected.

46. *Purposes* for which this ceremony is employed, two: — 1. Securing veracity at the hands of witnesses; 2. Securing fulfilment of duty at the hands of functionaries, more particularly on the part of *jurymen*. 1. *Mischievous*, in both instances, we trust it will, on examination be seen to be; thus efficient to evil purposes; 2. *inefficient*; and 3. *needless* to all good purposes, in both cases.

47. — I. First, as to its application to *testimony*, and on that occasion, as to its mischievousness: 1. Abundantly sufficient to warrant and necessitate abolition would surely be its above-mentioned property of producing mendacity, were it the only one.

48. — 2. But to this is added another, of most appalling magnitude. Yes: the giving impunity to crime in every shape, the most obvious not excepted. In the hands of every man, — the most worthless and mischievous not excepted, — does it place the power of producing this effect: thus sharing with the sovereign the prerogative of *pardon*. Called into the witness-box, *conscience* (he declares) will not suffer him to bear a part in the ceremony. Not unfrequently have instances of such refusal made their appearance: none, in which punishment, in any shape, has been attached it: the insincerity, howsoever real, not being manifest nor proveable, punishment for the refusal would be *persecution*; and *that* persecution, happily, too odious to be endurable.

49. Without the ceremony, for this long time, in *civil* cases, now of late in criminal cases, admission has been given to the testimony of *Quakers* and *Moravians*. "*I am a Quaker*," or "*I am a Moravian*," (suppose) is in purport the averment made by the person thus called upon: — this said, who shall gainsay it?

50. Suppose even punishment applied, how would the matter be mended? Applied it could not be, till after the impunity had been effected.

51. Moreover, even were the infliction sure, it might be made worth a man's while to undergo it.

52. So, in any case called a *civil* case, may he in like manner give or sell success to either side.

53. Murderous robbers might thus go on in impunity for any length of time, in the commission of the crime. In the number regarded as requisite they join in it; a reward, a high amount with pardon, as usual, being offered to any one of them for information, some of them — one or more, proffering testimony against the rest: trial coming on, they declare themselves atheists; whereupon they refuse to bear a part in the ceremony: true it is, that in this case conviction not taking place, pardon is not earned; nor need it, for no testimony being delivered, acquittal follows of course: acquittal on the part of the prisoners, for no evidence is there against them: on the part of the informer, for no evidence is there against him. But (says somebody) by simple and direct refusal to swear, unaccompanied with any such declaration of opinion, will not the same effect be produced? and is it not produced accordingly? Natural enough this question: but to find an answer to it, belongs not to the present purpose.

54. Yes, atheists; of Quakerism or Moravianism, declaration can no longer serve; but *atheism* remains as good as ever: power of pardon, a share in the king's prerogative, remains the reward for it.

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55. — II. Secondly, as to its inefficiency, still as applied to testimony: — To a mode of punishment, which might, in an almost unexampled degree, be efficacious, it substitutes a mode in an extraordinary degree inefficacious. Of contempt of court, when, in any other shape, committed in court, commitment to prison being an instantaneous consequence, the same consequence might be attached to such contempt in this shape. Under the name of *evidence*, testimony, when orally delivered, not being received without an immediately previous oath-taking; thus it is that mendacity, whenever it is thus committed, is committed in the shape of perjury; and in this shape this mode of proceeding against it has been — if not employed, at any rate threatened: in which case no *individual* is there, on whom the expense and vexation attached to the character of *prosecutor* would be imposed: accordingly, what in relation to this matter we shall have humbly to propose is — that in every case in which it is seen that the whole of the stock of evidence which the suit affords, is brought out at the time of the perjury, punishment for it may instantaneously follow.

56. So much as to efficiency when the ceremony is not employed: how stands it now that the oath is so almost universally employed? Punishment none, without the concurrent testimony of two witnesses: nor then, but at the expense of a separate prosecution, commenced at a distant point of time, and with such disadvantageous prospects as to success. Proportion of the number of cases in which prosecution has place, to the number in which delinquency has place, — at what shall it be set? Say, for example, at a venture — out of ten thousand, scarcely so much as one. So much as to inefficiency.

57. Thirdly, as to needlessness. For a complete and conclusive demonstration of this property of the ceremony, we humbly beg leave to call on the testimony of the Honourable House. Compared with the importance of the legislative, what is that of the judicial function? When, for the formation of a ground for a legislational proceeding, *evidence* is called in, in what instance is employment ever given to this ceremony by the Honourable House?

58. Thus efficient to bad purposes, inefficient and needless to any good purpose whatsoever in particular, — in particular, to that of giving execution and effect to the law, — far indeed is it from being so, to the sinister interest of Judge and Co.

59. Already mentioned has been its needfulness, with relation to the profit by *written pleadings*.

60. Add to this, the encouragement and invitation given to dishonest plaintiffs and defendants, by the chance which it produces of failure on the part of honest ones; and thence the addition of dishonest to the aggregate of honest demands and defences; the profit to subordinate judicial functionaries, by the fees, partly in the direct way, partly in various indirect ways, necessitated; and to judges their *superordinates*, correspondent profit in the shape of *patronage*, — all by the clumsy and complicated machinery, which, to so large an extent, is, on this occasion, employed.

61. See the country over, for example, *attorneys* converted into *masters extraordinary in chancery*, and for no other purpose.

62. Note now the consequence as to delay, and *non-decision* and *misdecision*: or in one word, *failure* of justice. No machinery at hand, no oath capable of being administered; and the testimony, how important soever the purpose, lost, and the purpose frustrated: frustrated — always for a time; not unfrequently for evermore.

63. So much for its effect when employed on a judicial *occasion*, as well as for a judicial *purpose*. Now as to its effect when employed on *an occasion not* judicial (there not being any actual suit in the case:) only for an *eventual* judicial *purpose*, to wit, in case of prosecution for perjury in respect of it. Under this head, in proof of its inefficiency, the bare mention of the words *custom-house oaths* might of itself be amply sufficient.

Other instances, in which the quality of it is demonstrated and the number ascertained might be adduced; but the range of them being less extensive, respect for religion and its teachers commands our silence — one observation alone excepted; namely, that to oaths, whether assertory or promissory, the *sanction* is the same.

64. So much for *testimonial* oaths. Now as to *official*. Various are the *occasions* on which, correspondently various the *purposes* for which, under the existing system, the obligation of giving employment to this ceremony has place.

Principal occasion, that of *entrance* upon office: *declaration* with relation to *opinions* — *promise* with relation to *conduct*. On neither of these occasions is punishment as for perjury, or punishment in any other shape, attached to what is regarded as a violation of the oath. In all these cases, whatsoever good consequence is looked for, from the solemn promise with the oath attached to it, would (we humbly contend) be equally obtained by a promise declared with like solemnity, unincumbered by the oath.

65. In all these cases, intended or supposed effect of it is — its operating as an instrument of *security*: real effect, operating as an instrument of deception and consequent insecurity: reliance being placed on this inefficient security, others that would be efficient

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and applicable, remain unlooked out for and unapplied.

66. Take, for example, the fee-fed judge: whatsoever line of conduct — conformable to justice or adverse — that it happens to be agreeable to him to take, — pronounced with appropriate emphasis, out come the words — "*My oath!*" *His oath* — does he say? What oath?—who ever saw him utter any form of words under that name? And if uttered, what would it be found to amount to? Just nothing: some vague generality, vying with cobwebs in effectively binding force.

67. Enter now upon the stage *jurymen's* oaths — and with them the everywhere abundant and perennial crop of jurymen's perjuries. To the exercise of this important function, the indispensable obligation of bearing the supposed effective and so much relied on part in this ceremony, stands attached: at the same time, for the production of declared unanimity, — truly or falsely declared as it may happen, continuance in one and the same apartment without respite or refreshment, except by permission of the judge, though death by inanition, with the antecedent course of torture, be the consequence: torture to such a length, at no time ever endured or endurable.

68. Here then as to the consequence in the shape of perjury. Declaration of opinion it is, opinion itself it is not, in the power of torture to produce. Here, then, as often as diversity of opinion has place, here are two antagonizing forces applied to one and the same man, at one and the same time: here is the oath to make him speak true, here is the torture to make him speak false: the torture — this altogether irresistible instrument, employed in the manufacture of perjury.

69. First, as to the prevention of mendacity. To this, altogether needless, on inspection, will be seen to be this ceremony, with the perjury thus essentially sticking to it: thrown away the price—and it has been seen how dear a one — paid for the use of it. Look, in the first place, to *natural* religion. If mendacity, independently of this or any other ceremony, does not stand prohibited, — prohibited, which is as much as to say, visited with punishment, what else is there that does? What, then, is the additional security that it affords? No other can it be than that which would be afforded by some extra punishment apprehended in the future life, at the hands of the Almighty, as about to be undergone on the score of the thus supposed aggravation, over and above that which would be apprehended, if the ceremony were not employed.

70. Now then, for this supposed additional security, what is the price paid? An assumption is made and acted upon: and what is it? That, to the purpose in question, the power of the Almighty is at the disposal of any and every man, who for any purpose chooses to employ it: of any man, howsoever bad, for any purpose howsoever bad, the Creator an instrument in the hand of every one of these his creatures!—an instrument, on the part of which compliance is more assured, than it can be on the part of a slave!—the Almighty more surely obsequious to the will of the most wicked man upon earth, than a sheriff is to that of the judge!

71. Look, lastly, to *revealed religion*. On this score, we humbly beg that, now at length, by the constituted authorities, and in the first instance by the Honourable House, it may be taken into consideration, whether, in addition to these considerations, or even without the aid of them, the words *swear not at all*, in more passages than one, attributed to the holy Author of our religion, might not suffice to put an end to *swearing*, in compliance with compulsion, imposed by those same authorities.

72. As to mendacity, the production of this so abundantly thus produced commodity — is this then the object? Neither to this purpose is it at all needful. Legislators, if simple mendacity will content you — mendacity without perjury for a zest to it — abolish the ceremony: there remains the torture, which is quite sufficient to produce the thus desired effect.

73. Note here, the effect of the torture in the production of mendacity belongs not precisely to the present head. It is however too influential on justice, and the efficiency of the main body of the law, to be suffered to pass without notice. It is — the placing the decision, and thereby in so far the lot of the parties—the placing both under the command of the strongest will: in other words, of the most long-suffering and persevering stomach.

74. Of this ceremony, such as it is, is what is called a violation, a sin? So many times as, being employed, it is violated, so many are the sins created, not to say committed: abolish the ceremony, the manufacture of these sins is at an end: and sins, in number altogether infinite, saved from being committed. Such the security supposed to be thus given against mendacity. True it is that times were, when — not merely on a certain *occasion* for a certain *purpose*, — not merely in conjunction with other securities for veracity, — but singly, and to the exclusion of all such other securities, — this ceremony, having been instituted, was frequently performed.

75. Witness the so stated *wager of law*. *Occasion*, demand of money on the score of debt: *purpose*, the obtaining a discharge from the demands. *Witness*, the defendant himself; testimony, assertion in general terms,

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denying that the money forming the subject-matter of the demand, is due. With this witness came a *chorus*, consisting of twelve others, styled *compurgators; subject-matter of their* testimony, their belief that what their principal and leader of the band — the defendant — had been saying, was true. But these times, what were they? Times of primeval and grossest ignorance, superstition, and barbarism.

76. In conclusion, as to the whole of this momentous subject, and our respect for the time of the House not permitting us to do anything like complete justice to the importance of it, we humbly beg leave to give intimation to the Honourable House, that the form of a petition, in which fuller consideration is given to it, is in print, and universally accessible.

77. That, in no case, this part of the institution is productive of good effects, is more than we take upon us to affirm. On it depends, for its existence, the latent, but not the less efficient, virtual *veto* possessed by the jury, and thus by the *strongest stomach* among them, over the laws. If, on any point of law to which jury-trial applies, the statute law and common law together is in a state of opposition to the welfare of the community, — in this respect, beneficial, in so far, is the effect of jury trial in its present shape: and on this part of the institution, we beg it may be considered, whether that liberty does not depend — the liberty of the press, to wit — on which everything else, which, in a peculiar manner, is good in the form of government, depends. But to this and the other cases, in which the constituted authorities have a particular interest, more or less adverse to the general interest, such as treason, sedition, and the like, this feature may be preserved, without its extending to any other cases.

78. In any case, to produce whatsoever good effect is expected from the ceremony, the substitution of the word *affirmation* (or, to give indication of *deliberateness,) asseveration*, to the words *swear*, *oath*, and *maketh oath*, might, we submit, most fully and effectually suffice.

79. To conclude, neither to the prevention of mendacity, nor (if such should be the pleasure of the king in parliament) to the preservation and augmentation of mendacity (or, as it is more familiarly called, *lying*) is the preservation of this cumbrous and dissension-sowing ceremony necessary. This we have already taken the liberty to observe and show: and we humbly trust, that to the preservation of that *veto*, which, as above, so long as the government of this country continues in its present form, is so indispensable, — this same ceremony will not be found to be in any way more necessary.

80.—VI. *Device the Sixth—Delay, in groundless and boundless lengths, established.*

Delay is, so long as it lasts, *denial*: and we invite and challenge any person to say why, though it be but for an hour, *denial of justice* should have place.

81. In the process of judicature, — of the various *sources*, or say *causes* of delay — all of them factitious — the work of Judge and Co.— samples (will it please the Honourable House to behold them?) the eight here following: —

I. *Source the first, vacations.* — The year split into *terms* — four in the year — with intervals between them, styled *vacations*: during which last, so far as could be contrived, *denial of justice* remains established. Terms, four: vacations, as many.

In the whole year of 365 days, aggregate number of days allotted to administration of justice, 91: to denial of justice, 274: add Sundays in term time, 13; total, 287: to justice not so much as a fourth part of the time allotted to injustice.

82. —II. *Source the second, circuits.*—For country causes, no *trial* but on *circuits*; circuits, in the year, at the most no more than three; till the other day, but two: in some counties, now two; till the other day, no more than one. In these cases, what is the *crime* for which denial of justice — in a word, *outlawry* (for this it is, so long as it lasts) is thus made the penalty? Is it the crime of living at so great a distance from the metropolis? If not on the account of *crime*, on what other account is the condition of one part of his majesty's subjects, of all ranks, rendered, in so essential a respect, to such a degree, inferior to that of all besides?

83. — III. *Source the third, fixed days.* — Between one proceeding and another, intervals established by *fixed days*, of which, further on, under the head of *Blind Fixation*: days the same, length of interval the same, for every individual suit: say, for example, of a *fortnight*, whereas necessary will be, in some cases, no interval, in others a day, in others again a year or years: none where, upon plaintiff's own showing, his demand is ungrounded; a day or less (for notice) when the residence of both parties is in the near neighbourhood: years one or more, when, at the moment, defendant's residence is, for example, at Australia.

In this latter case, if, as in the established mode, inaction on the part of a defendant is by the judge acted upon as if it were conclusive evidence of the justice of the demand, and judgment and execution take place accordingly — here delay gives place to what is still worse: namely, *precipitation* (of which presently) with misdecision and misconduct for its certain consequences,

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84.—IV. *Source the fourth, written pleadings.*—Of these, above. If, a mass of written allegations being exhibited, loss of cause is, as under the existing system, established as a penalty for the non-exhibition of correspondent counter-allegations,—allowance of time for framing them is necessitated, and, on each individual occasion, time adequate to the need, delay in indefinite quantity, is thus made necessary to justice.

85.—V. *Source the fifth, mischievous removals.*—*Needless transference* and *bandying of suits, transference* of a suit from the judicatory in which it has been commenced, to a different one in which it is to receive termination or continuance, as to which under the head of *Device the tenth, mischievous transference, &c.*

86.—VI. *Source the sixth, equity procedure.*—The mode which has place in the judicatories called *courts of equity:* a mode altogether different from that which has place in the judicatories called the *common-law courts;* and in the shape of delay, as also of expense in a prodigious degree still more productive of torment.

87.—VII. *Source the seventh, court christian,* alias *spiritual court,* alias *ecclesiastical court,* procedure.—Of this mode, differing again from both the others,—and, in lengthiness of delay and expense vying with that of the equity courts,—mention is made only to show that it has not been overlooked: for though, in delay as well as expense, it vies with the most dilatory of the two,—yet, the number of suits carried on in it is to such a degree comparatively small, that the use derivable from the picture of the additional torment produced by it, would not, on the present occasion, pay for the space of time and labour it would necessitate.

88.—VIII. *Source the eighth, procedure in appeals;* that is to say, demands made to a superordinate judicatory, for reversal or other change, in the *judgments,* otherwise styled *decrees,*—*ultimate* or *intermediate,* styled *interlocutory,*—pronounced in the judicatories,—original, or say *immediate,*—in which the suits respectively took commencement or received continuance.

89. To procedure in equity courts and on appeals, development is to the present purpose necessary, and here follows.

First, as to *equity procedure.* Endless would be the task of giving anything like a correct and complete sketch of the system of delay, of which the judicatories, styled, as if in mockery, *courts of equity,* present the scene: a few slight touches are the following:—

90.—I. In regard to elicitation of *evidence,* modes in one and the same suit, three: namely, the epistolary, or say written mode; and two varieties of the oral, or say word-of-mouth mode.

91. Epistolary mode. Employed at commencement, *questions* styled *interrogatories,* put by plaintiffs to defendants: name of the instrument of which they form a part, the *bill*

92. Between each such string of interrogatories, and the correspondent string of answers (name of the aggregate, *the answer,*) an interval of months. In one amply extensive parcel of the whole number of these suits, the end in view, as prescribed by interest, is, on the plaintiff's side, the maximization—not of dispatch, but of *delay:* that *interest* being accompanied with the *faculty* of multiplying those intervals of delay by an unlimited number. Sufficient of itself is this state of things to spin out into years, a suit, to which, by an interview between the parties, in the presence of the judge, as in the case of procedure before a justice of the peace, termination might be given in the same number of minutes: debt, for example, on a note of hand, whether for forty shillings or forty thousand pounds.

93. To elicit, *per contra,* for the benefit of the defendant, whose *self-disserving* evidence has thus been elicited, the like evidence from one who is plaintiff in this same suit, another such suit, commenced by a bill styled a *cross bill,* is made necessary. Thus, lest the above-mentioned delay should not be sufficient,—what, in a common-law court, would be but *one* suit, is split into *two.*

94. Note, that as yet not a particle has been elicited, of that which comes from the only source from which a common-law court will suffer any evidence to be elicited,—namely, the testimonial or other evidence capable of being furnished by *extraneous* witnesses; *extraneous* on the present occasion, so called of necessity, to distinguish them from parties, where, as above, information is received from them, or called for at their hands; say accordingly *party witnesses,* or *testifying parties:* and, before the elicitation of any such evidence is so much as commenced, money, to the amount of hundreds, or even thousands of pounds, may, at the pleasure of the plaintiff, if rich enough, be extorted from the defendant, if he has it: and thus is his utter ruin produced.

95.—II. Oral mode employed subsequently in the elicitation of the evidence of extraneous witnesses, and sometimes in the elicitation of ulterior evidence from the defendant. Scene, the *examiner's office:* mode of examinations, *secret.*

96.—III. Oral mode employed in addition to the above, in the elicitation of evidence relative to matters of *detail.* Scene, the office of the subordinate judge, styled a *master in chancery.* For attendance at this office, not more than an hour at a time ever allowed in the same suit: and by any one of these *actors,* of all of whom it is made the interest to maximize the delay, the hour may be cut down to

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a time too short for the doing any part of the business. Nor does any such meeting take place till after *three* appointments, with an interval of several days between the second and the third. For these actors, if so they may be called, for every one of them, fees, extorted by the power of the superordinate judge, the chancellor, as if they had all attended: the *master* establishing this mode of obtaining money under false pretences, and sharing largely in the profits of it. Of late years, the salaries of these functionaries have received large increase: and this and all their other modes of depredation left undiminished. Had the enactment made by parliament (it is that of the 22 Geo. II. ch. , § 1,*) been applied to them, as it would have been had they not been in a public trust, not one of the judges by whom, for several generations, these situations have been occupied, — not one of them who would not, over and over again, have been either whipt, pilloried, or transported; for only by power, and consequent impunity and complicity with judges of a still higher order, not by innocence, are they distinguished from those delinquents who, under the name of *swindlers*, are every day so dealt with.

97. — IV. By these judges, *vacations* made for themselves: some, of not less than seven months out of the twelve: witness, declarations made by men of the first eminence in the profession: made in print, years ago; and confirmed by the confession implied in uninterrupted silence.

98. All this forms as yet no more than a part of the length of delay established in equity procedure.

In the greater number of the individual suits carried before the superior common-law courts, — *after* the common-law suit has been made to run its length, still farther length may be added to it; added by any defendant, who, being rich enough, has an interest in so doing; namely, by a suit, styled, as above, an *injunction*.

99. In the year 1824, April 25, year 5th of the present reign, issued a commission: *purpose* of it (so therein declared,) introduction of *improvements* and *changes*: *subject-matter*, declaredly confined to *equity courts* and their proceedings. Five years, within a trifle, have elapsed, and in all this time no *improvement* made; in consequence, no *change* made but such as, in comparison with the abuse, was, in *extent*, conspicuously trifling, and, in *quality*, has proved to be worse than none.

100. In addition to this, another commission instituted in the year 1828, composed of a different set of commissioners: subject-matter expressly confined to the superior common-law courts and their proceedings, as if, in the practice of two sets of courts, with their branches of jurisdiction, to such a degree entangled throughout the whole field, — it were possible to make any substantial improvements — improvements in either, — without *change*, and for that purpose, all-comprehensive *scrutiny*, applied to the other.

101. We humbly entreat the Honourable House to consider whether it be in the nature of man that a separation of this sort, thus deliberately made, by, or by the advice of, persons perfectly conversant with the whole of the business, could have had any better object than the giving perpetuity to a system of depredation and oppression thus portentous.

We shudder at the bare idea of the Honourable House rendering itself an accomplice of such enormities, by remaining silent and inactive, after receipt of this our humble petition, and forbearing to apply either the remedial system, which we shall take the liberty to suggest, or some other not less effectual, if any other such there be.

102. Now for the remaining source of delay — *appeals and writs of error*. Omitting particular cases, in endless variety, when, on the ground of alleged *misdecision*, a suit is transferred from a relatively inferior to a relatively superior court, — if it be in equity procedure, *appeal* is the name — the name given to the operation, or the instrument by which the transference is effected: if it be in common-law procedure, *writ of error* is the name. *Appeal* is the term thus put foremost, as presenting, to an unlaw-learned mind, a clear idea; *writ of error* a confused one.

103. Note, that only for alleged misdecision, that is to say, either at the conclusion, or during the continuance of the suit, are either *appeals* so called, or *writs of error*, received. But, not more effectually done is injustice by *misdecision* than by *non-decision*: by non-decision, whether *after* a suit instituted, or for *want* of a suit instituted.

104. Causes of such *want*, any one of these which follow: — On the minds of persons wronged —

I. Opinion of the relative inaptitude of the system.

II. Opinion of the relative inaptitude of the judges, one or more, employed in the application of it.

III. Fear of being, at any time after commencement, and before conclusion, sunk into the gulf of ruin by the weight of the purse on the other side.

IV. Or, in other situations, relative indigence, such as to produce an utter incapacity of giving so much as commencement to the suit.

105. In some instances, in the case of a *writ of error*, the appeal goes immediately from the four-seated court in Westminster Hall to the *House of Lords*: in other in-

* Ch. XXVII. might correspond to a certain extent with the remarks: perhaps the act meant is 30 Geo. II. c. 24.—*Ed.*

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stances, another and more numerously-seated Westminster-Hall judicatory of appeal is *interposed*, under the name of the *Exchequer Chamber*.

106. By an *appeal*, in which and whatsoever way denominated — an additional mountain of delay is set down upon the mountains above sketched out. But of appeal, in both cases, there are stages upon stages, mountains upon mountains, set down, one upon another.

107. For an example of the *stages*, or say *stories*, in this pile — behold in Blackstone the following: sorts of cases to which they apply, those called *civil*: —

I. From various "inferior courts," to the Common Pleas (iii. 40.)

II. From the Common Pleas to the King's Bench (iii. 40, 56.)

III. From the King's Bench to one of the three courts, all confounded under the name of the Exchequer Chamber, composed of so many different lists of judges (iii. 56.)

IV. From the Exchequer Chamber to the House of Lords (iii. 56.)

108. Note well the organisation of this chaos.

From the four judges of the Common Pleas, appeal to the four judges of the King's Bench: from these, back again to those same four judges of the Common Pleas; who are thus expected, every one of them, to pronounce condemnation on his own act, with the addition, however, of the four judges styled *Barons of the Exchequer*: which same court of the Exchequer is "inferior in rank," says Blackstone, iii. 43, "not only to the court of King's Bench, but to the Common Pleas also." Thus, to apply conviction to an alleged error in one court, the business of two others is put to a *stand-still*. To complete the confusion, nothing more is wanting, than to give an ulterior appeal from the exchequer chamber immediately, or through the medium of the House of Lords, to a court composed of the judges of some one or more, or all of the judges of the courts herein just mentioned, under the name of the "inferior courts."

109. Of the gradation here exhibited, was ever any instance exemplified in practice? Probably not. But why not? *Answer* — Because the rapacity and wickedness of judges — creators and preservers of this system — have to such a degree outrun the wickedness of their pupils, the attorneys, and the opulence of individuals, whom they have thus employed in the endeavour to convert them into dishonest suitors.

110. Now as to appeal and its stages, in the so-called *equity* courts.

111. — I. When the suit is in the first instance brought before the Chancellor, stage of appeal, but one — appeal to the *House of Lords*.

112. — II. When the suit is in the first instance before the Vice-chancellor, each party has the option between, an appeal immediately to the House of Lords, or, first to the Chancellor; then from him, — as in the instance of this same appellant, or of the party on the other side, — a further appeal may be made to that same Right Honourable House.

113. — III. So, where the suit is in the first instance brought before the other subordinate equity judge, whose title is the *Master of the Rolls*: a functionary, who, under this absurd title, has for centuries exercised the functions of a substitute to the Chancellor; in a word, those of a Vice-chancellor, though without the name.

114. In equity procedure, stages of appeal have place, disguised under different denominations.

115. — I. Under the name of exceptions to report, appeal from the judicatory of a Master in chancery, to that of the Chancellor, the Vice-chancellor, or the Master of the Rolls, as the case may be.

116. — II. Under the name of a *rehearing*, appeal from any one of those functionaries to his successor.

117. — III. Under the name of a *rehearing*, appeal from any one of them at one time, to himself at another time; for thus are two sorts of proceedings, so different in tendency, disguised under the same name.

118. By the Master of the Rolls or the Vice-chancellor a definite decree (suppose) has been pronounced: plaintiff or defendant, losing his cause by it, proposes to himself to take, by means of appeal, another chance. To which, then, of the two judicatories, shall the appeal be made? — the Chancellor's court, or the House of Lords? For answer — the solicitor of the losing party takes the soundings of the two purses, of his client's and of the adversary's: if in his client's there is depth enough for both courts, he recommends the chancellor's as the most eligible court; namely, that from thence if, without reproach to himself, he has the good fortune to succeed in making his client lose his case a second time, he may carry it into the House of Lords, in which there being no ulterior judicatory, it will be his interest, for reputation's sake, and accordingly his endeavour, to gain rather than lose it: from the Chancellor to the House of Lords; that is to say, from the Chancellor under that name, to him, said Chancellor, under another name.

This course, it being that which, in the situation of a solicitor, it is every man's interest to take, is that which, with a view to legislative arrangements, every man, unless prevented, ought to be expected to take; and as to a solicitor, so should this expectation apply itself to every dishonest plaintiff or defendant, who being in the wrong, and know-

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ing that he is so, has formed a plan for purchasing of the judges in question the faculty of acquiring or retaining the estate in question, by the ruin of the destined victim, thereby availing himself of the offer which, though not in words, is not the less in deeds, held out by the several members of the learned brotherhood to all who are respectable enough to be able to give acceptance to it: yes, respectable enough; for, in the language of the opulent, opulence and respectability are names of the same thing.

119. A word or two as to the particular sources of profit: profit to Judge and Co. from the delays manufactured as above.

I. By the delay are produced, as above, dishonest suits and defences, which otherwise would not have place: the evil hour is thus staved off to the last moment. To a dishonest defendant, the delay produces, for a time, if he be solvent, at any rate common *interest of money* correspondent to the duration: add, if in trade, profit of trade; if he be insolvent, the faculty of converting the whole to his own use. Of this profit, what part, if any, shall be *net*, depends upon the proportion as between debt and costs of suit. Of the costs, one constant portion is — that which is laid hold of by Judge and Co., the dishonest man's partners and accomplices; laid hold of in the first instance, and before so much as a farthing's worth is paid to any one of those to whom the debt is due.

120. — II. When the debt is such, that the interests amounts to still more than the price paid to Judge and Co. for the delay, the delay follows of course.

121. — III. Delay breeds incidents; incidents, fees. Who shall number the varieties of these prolific incidents?

IV. Bred out of one incident — namely, the incident of death — one inducement to delay is, in cases to a large extent, the extinction put upon the suit, by the death of a party, on one side or the other, — and, on either side or each side, deaths of parties may have place by dozens and scores. Invited by Judge and Co. for joint profit, the injurer, by delays made when in the situation of defendant, helps to consign the injured plaintiff to a lingering death, the result of vexation; Judge and Co. having taken care to exempt from the obligation of making compensation the murderer's representatives. "A *tort* is a sort of thing that dies with the person:" such is the expression given to the rule, in the lawyer's dialect of the flash language.

122. — V. When these factitious delays were first instituted, the minor portions of the year sufficed for as many suits as money could be found in the country to pay for, in fees: the major part being consecrated to ease: in proportion as opulence has increased, *ease* has been exchanged for *fees*.

123. In the business of the department of justice, is factitious delay useful, and as such justifiable? If so, apply it to the finance and defensive force departments: apply it to the military departments, land service and sea service: in particular, in time of *war*: not more indefensible is it in those than in this.

124. Whence this difference? *Answer* — In these cases, were any such factitious delays established, government would fall to pieces: in these cases, accordingly, they are not established: in the justice department, government, however badly, can go on, the delay notwithstanding; in these accordingly, they *are* established.

So much for government. Now for surgery. To a patient who wants to be cut for the stone, does the surgeon ever say, wait with the stone in your bladder till I have nothing else to do? No: by the medical man, no such thing is ever said: by the fee-fed judge it is in effect, as often as he makes a plaintiff wait for his money, when wanted for making payment to the surgeon. Whence the difference? *Answer* — From this: — To produce the delay without losing the customer, is not in the power of the surgeon: it is in the power of the judge: and, so far from losing, he is a gainer by it.

125. On this occasion, as unhappily on so many others, *religion* is pressed into the service of injustice. To St. Hilary, a Catholic saint — to St. Michael, a Protestant as well as Catholic saint — to Christ Jesus — to wit, by the word *Easter*, nay, even to the whole incomprehensible *Trinity*, as St. Athanasius so truly styles it, — does this misery-making employment stand assigned.

126. Out of the Sabbath is made another pretence. "Which of you shall have an ox or an ass fallen into a pit, and will not straightway pull him out on the sabbath-day?" By whom this is said, may it please the Honourable House to consider. If, when it is by mere accident that the damage has been produced, worship of the God of Justice is no sufficient warrant for delay of justice, how much less when it is by injustice? — by groundless distress for rent (suppose) or by robbery? By the worship of the God of Justice, would not an appropriate overture be furnished to the oratorio of judicature?

127. Wives converted into widows, children into orphans; both by slow murder rendered destitute; depredators fattened upon the substance of these victims, Judge and Co. contrivers and sharers in the booty, — such is the scene presented by the fruit of this wisdom — of this branch of ancestor wisdom: the branch to which we are indebted for the plantation of judge-made law.

> "When sleeps injustice, so may justice too:
> Delays, the wicked make; the injured rue."

These two memoriter verses it is our hum-

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ble wish to place in the memory of the Honourable House.

128.—VII. *Device the Seventh—Precipitation necessitated.*

Excess on one side is thus made the parent of excess on the opposite side. By delay is produced precipitation: and, reciprocally, by precipitation, more delay. Grand and principal instrument of precipitation, *jury-trial*, as hitherto conducted; but, to its efficiency, vast addition made by circuits.

129. Of the suits out of which a pretence for recurring to this mode of trial is manufactured, classes two: one, composed of those which, by the very nature of the case, are rendered incapable of receiving their termination from a judicatory so composed.

130. Instance, *account:* a case in which, under the name of one single suit, may be included suits in a number altogether indefinite; suits, as many as the account contains *items*, each with a separate batch of evidence belonging to it.

131. The other class of these indeterminable suits, is composed of those which are rendered such by *accident;* that is to say, by the magnitude of the aggregate of the evidence. In the case of Elizabeth Canning, prosecuted for perjury, — time, about the middle of the last century, — seven days passed before the trial was concluded. Since then, instances of still longer duration might, perhaps, be found.

132. In the interval that has place at present between circuit and circuit, what limit can be assigned to the number of suits that might present themselves, if the door, shut against them by this institution, were thrown open?

133. Behold now Judge and Co., syringe in hand, forcing and injecting the whole mass of all the suits into a compass of *three* days, or in some counties *two* days. What is the consequence? On condition of their being heard badly, — in regard to some portion of the whole number, possibility of being heard has place, and accordingly heard they are: in regard to the rest, even under that condition, no such possibility has place.

134. On those which remain in hand is stamped the appellation of *remanents* or *remanets*. For Judge and Co. the more *remanets* the better: the more fresh suits for redress of one and the same wrong.

Not that the number of these disastrous effects is — at all times, or even commonly — altogether as great as that of the efficient causes: for commonly, by the postponement, some, in number more or less considerable, are, at this stage of their existence, prematurely killed: cause of death, deperition of evidence, or death of a party: more frequently perhaps than either, on the part of the injured plaintiff, exhaustion of the power of finding the matter of fees. But for this, *remanets*, in swarms, might go on, begetting one another to the end of time.

135. When one of these indeterminable suits comes to be called on, brought to view then is the discovery — that, from the first, such it was in its very nature. Re-discovered on every circuit is this discovery: re-discovered for centuries past. But, the jury-box is not the less worshipped. Why? *Answer*— Because, as at present constituted, trial *by* jury is, in every instance, trial with lawyers.

136. Fresh suits produced by precipitation are — 1. In an immediate way, *new trials;* 2. In an unimmediate way, namely, by means of *remanets, arbitrations.*

137.—I. First, as to *new trials.* Greater in this case may to the parties be the expense, greater accordingly to Judge and Co. the profit, than by the original suit. For, preceded always is the new trial by motion for ditto: which said motion is one sort of suit, carried on for the purpose of determining whether another suit shall be carried on or not: shape of the evidence on which the original suit is determined, the best shape: shape, in which the excretitious suit is sometimes determined, the worst shape — namely, affidavit evidence. Barristers necessarily employed as well as attorney: whereas, in the original suit, it may have been carried down to trial, and perhaps most commonly is, without the intervention of argumentation by barristers: commonly, that is to say, where the *general issue* (as the phrase is) being pleaded, no demand has place for written pleadings of more than a determinate and comparatively short length.

138.—II. Now as to *arbitrations.* Of the disadvantages this sort of suit labours under, with correspondent advantage to Judge and Co., samples are these:—

1. Power for the attainment of evidence comparatively inadequate: not comprehending the power of obtaining it from all places: not ascertained whether in it is universally comprised any power for rendering attendance on the part of witnesses effectually obligatory.

139.—2. If not, then, on many occasions, the body of the evidence will be not merely *incomplete*, but, in the sinister sense of the word, *partial:* admitted, and perhaps exclusively, witnesses, with a *bias* on their testimony—"*willing witnesses*," as the phrase is: and these, biassed all of them in favour of the same side: of which state of mind the very fact of the willingness affords some, although not conclusive, evidence.

140.—III. *Evidence of parties. Admitted* it cannot be, without giving up, as completely adverse to justice, the general exclusionary rule; *excluded*, not without substituting mis-

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decision, or denial of justice, to right decision, in a large proportion of the whole aggregate number of the suits, demand for which has place. Yes, *denial of justice:* for, in so far as it is foreknown that by the exclusion put upon evidence necessary to success, all chance of success is excluded,—in so far the suit will not be instituted.

141.—IV. Professional persons, if chosen as arbitrators, must be paid: here—be the payment ever so moderate and well-regulated—here will be a vast addition to the expense: the remuneration being over and above that which, at the expense of the whole community, is given to the *permanent* judges—*judges* so styled and intituled.

142.—V. But, in cases thus disposed of, the mode of payment is in a flagrant degree corruptive and adverse to the professed end: it is payment *by the day;* a mode, by which a *premium* is given for the maximum of delay and extortion: corruption, delay, and extortion, which it is not in the power of human sagacity to prevent, punish, or so much as discover and hold up to view: corruption, which it is not in the power of flesh and blood to remove.

143.—VI. These professional judges, who are they? Naturally such, of the choice of whom, self-regarding or sympathetic interest is more likely than regard for the interest of justice—more likely than appropriate aptitude—to have been the cause. In the train of the judge come always, along with the brief-holding, briefless barristers. Of the choice made, cause not unfrequent, and certainly none so natural, as recommendation at the hands of the judge. Proportioned to the value of every situation is that of the patronage by which it is conferred: and, recommendation taken, patronage is exercised.

144.—VII. Question, which of the suits shall be *tried?*—which, by being left *untried*, converted into *remanents?* This will depend upon the result of the conflict of interests. Yes: but of whom?—the suitors? No: but of learned lords and ditto gentlemen. By sinister interest, full is the swing enjoyed in this case: into it, is it possible for the eye of public opinion in any degree to penetrate?

145. In respect of *favour*, manifest it is here, upon how different a footing stand the *forced* arbitrations brought on in this *circuitous* mode, compared with those *spontaneous* ones which *originate* with the *parties*. So many spontaneous arbitrations, so many usurpations upon the authority of learned judges. Moreover, most commonly the arbitrators will be *unpaid*, or at any rate, *unlaw-learned*, individuals: whereas, on the circuit, a suit will not only have already brought grist to the learned mill, but have moreover brought with it a superior chance for finding learned arbitrators.

146.—VIII. *Device the Eighth—Blind Fixation of Times for Judicial operations.*

I. Only in relation to the exigencies of the case, and the interests of the sincere among suitors, not in relation to Judge and Co.'s profits, will, in this case, the blindness be seen manifested.

147.—II. Blindness to the exigencies of the case? Yes, to all exigencies: to all differences between time and time, to all differences between place and place.

148.—III. Between *dishonesty* and *insanity*, on the part of the creators and preservers of this arrangement—that is here the question—What?—for holding intercourse with the judicatory—for paying obedience to its mandate—appoint, in all cases, the same day for every individual subject to its authority?—on whatever spot, wherever at the time he happens to be, whether within a stone's throw of the justice-chamber, or at the Land's-end, and whether in England, or in Australia, in Peru, or in Nova Zembla? Except for the purpose of deception, is it in the nature of man that any such arrangement shall have presented itself to a sane mind? No: not of honest blindness is this the result; but of sinister discernment on the part of the contrivers, taking advantage of that blindness which, on the part of the people, has, with such deplorably successful industry, been organized.

So much for the policy of *dishonesty*.

149. Behold now the policy of *common honesty* and common *sense:* yes, and everywhere, but in the land of chicane, common *practice*.

I. No suit being (suppose) ever commenced, but by application made to you (the judge) in your justice-chamber, by a proposed plaintiff,—or, in case of necessity, a substitute of his,—settle with him, before you let him depart, the *means of intercourse* with him during the continuance of the suit; the further obligation being at the same time laid on him, of continuing the line, or say chain or series of those *means*, by timely information of every such change as shall eventually have place: reference being moreover at all times made to such other individuals, whose assistance to these purposes may eventually become necessary.

150.—II. Learn from him, as far as may be, the like means of intercourse, in the first instance, with all *other* individuals, whom his examination presents to view in the character of *defendants*, *extraneous witnesses*, or *co-plaintiffs*, or say *co-pursuers*.

151.—III. At the first attendance of each such other individual, make with him the like settlement.

152.—IV. Should any subsequent attendance on the part of the same or any *other* individual be, for the purpose of the suit, ne-

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cessary — accident and other exceptions excepted — let the time fixed for it be as *early* as, without preponderant evil in the shape of expense and vexation, it can be.

153. — V. Accidents: for example, death, sickness, impassableness of ways, calamities, casualties, confinement, or transference by force, by fraud, or the like.

154. — VI. Correspondent arrangement as to *inspection:* inspection of things *moveable*, requisite to be inspected by you, in the character of sources of *real* evidence.

155. — VII. So as to things *immoveable*.

156. — VIII. So as to *persons*, by sickness or infirmity, rendered immoveable.

157. — So, as to instruments in *writing:* whether *already* written; or, for the purpose in hand, *requiring* to be written, allowance made in this last case for the quantity of time likely to be made requisite by the quantity, or the quality of the matter.

158. — IX. As to the requisition thus to be made of the maximum of dispatch, note the exceptions following: —

I. When, of two individuals, attendance *at the same time* is requisite, the residence of both or either, — from each other and from the judgment-seat, — is at the time, at a certain degree of *remoteness:* in this case, for the attendance of him whose residence at the time is nearest, postponement; that is to say, to the earliest time, at which attendance can be paid by him whose residence is most remote, — is necessitated by the exigency of the case.

159. — II. So, in regard to any *greater number* of individuals, on whose part conjunct attendance is necessary.

160. — III. So, when the exigency of the case requires the attendance of one individual to be postponed till *after* attendance paid by this or that other.

161. With each individual, with whom, for the purposes of the suit, intercourse is holden, — *places* for intercourse, and in that respect *modes* of intercourse, two: — 1. The justice-chamber; 2. Other places at large: in the justice-chamber, by attendance of the individuals there: other places, in extraordinary cases by visitation, *transition*, or say *migration*, thither on the part of the judge. Thus as to intercourse in the *oral mode*. For intercourse in the *epistolary mode*, in ordinary cases it will be carried on by transference made of the written instrument or other source of evidence, from place to place; transference of letters, by the post, for example: from and to the justice-chamber, will be this transference, in most cases.

162. In this way will conjunct provision be made for the exigencies of each individual suit, and for the convenience of each individual concerned; — delay, expense, vexation — all minimized. So much for the policy of honesty.

163. Return we now to the policy of dishonesty, as it presents itself to a closer view. On the part of each such individual, requisite will be the performance of some *operation*, and, included under the head of *operations*, is that which is performed by the exhibition of some *written instrument* or other moveable source of evidence, as above.

164. Behold now the course, which, in regard to each such operation, and each such instrument, the dishonest plan prescribes.

For each such operation, on the part of every individual concerned, — fix one and the same day. Then, to *the minimization* of the evils in question — the evils, to wit, of delay, vexation, and expense, you will substitute maximisation: for, in each individual instance, the chances, against the so fixed day's being a proper day, are as infinity to one.

165. — I. In regard to operations, it will be your care to maximize the number of those by which birth is given to written instruments: for in this case, superadded to the profit — profit in the operation — is the profit upon the instrument. On this occasion, reciprocal generation has place: operation produces instrument; instrument, operations.

166. — II. So, the length of each such instrument.

167. — III. So, the number of the instances in which, for the performance of the several operations, days are appointed on which the performance of those same operations respectively is impossible: for by the impossibility the need of ulterior operations and ulterior instruments will be established.

168. — IV. So, and thence, the number of instances in which need of *application* for *further time*, and application accordingly, shall have place; in particular, the number of those in which the allowance of such time shall be a subject-matter of *contestation*.

169. — V. So, accordingly, of the instances in which the *notices*, without which compliance cannot have place, shall *not* have been received.

170. — VI. So, accordingly, of those in which, the notice shall not have been *given*.

171. — VII. So, likewise of those in which whether the notice *has* or has *not* been received and given respectively, — shall be the subject-matter of *contestation*.

172. — VIII. So likewise the expense of *special messengers*, employed by professional assistants (in this instance chiefly of the attorney class) in making communication of such notices, — the expense, to wit, for the sake of the profit extractable out of the expense.

173. — IX. So, accordingly, the *number* of such *journeys*, and the *length* of and *difficulties* attendant upon each.

174. — X. So likewise, in regard to the journeys employed in the making *seizure*, *definitive* or *provisional* and instrumental, whe-

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ther of *persons* or *things*, for the purposes of justice: that is to say, whether for *execution* and effect to be given to a decree of the judge, or for *evidence* to be elicited for the purpose of constituting a ground for it.

175. Admirable, under the existing system, is the equipment made for this species of *chase:* — *party-hunting*, to wit, and *witness-hunting:* — a chase in which the fox, instead of being the *huntee*, is the *hunter*, and his object is to catch — not as *early*, but as *late*, as possible, and through as many turnings and windings as possible.

176. Behold here an example. For the purpose of obtaining, at the hands of the defendant, the service he stands engaged for — say the money he stands engaged to pay — engaged, to wit, by a *bond*, to which his signature stands attached, adequate ground for regarding it as being his signature, is necessary. This defendant the judge sees standing or sitting in court. Shall this same judge say to same defendant, "Is this your handwriting?" Not he, indeed: no, nor any person by word of mouth. Never since the Conquest was any torment thus barbarous inflicted. By word of mouth, nobody. The hardship of saying *Yes*, or *No* would be unendurable. In writing? Yes, so it be by the plaintiff and by a bill in equity, length from half a dozen pages to any number of sheets of ordinarily-sized letterpress: as to time, at the end of years five or more as it may happen. Yes, or by word of mouth, so it be by learned counsel to a witness who has been hired to come, say from Australia for this purpose, if there be no person, whose residence is less remote, and by whom the information can be afforded. Both those resources failing, the defendant, by the hands of Judge and Co., pockets the money: the right owner loses it.

Think of a judge, with this spectacle before his eyes, turning them aside from it — lifting them up to heaven, and proclaiming, in solemn accents, his love of justice!

177. By the arrangements hereinafter submitted, put down altogether would be this pastime.

178. As *to fees*, inexhaustible is the source of them, thus created by *chicaneries about notice*.

179. Under the existing system, to this relatively so desirable state of things, with what consummate skill and success, and not less consummate effrontery, the *blank fixation* device has been adopted, may now be, with sufficient distinctness, visible.

180. To all these sinister purposes, it has been seen how indispensably necessary was the primordial, radical, and all-producing device — *exclusion of parties*, severally and collectively, from the presence of the judge.

181. So will it presently be seen, to all these same purposes, how exquisitely well adapted is the system of *mechanical*, substituted as far as possible to *mental*, judicature.

182. Nor yet, for reconciling the public mind to this host of enormities, and of sufferings produced by them, — are *pleas* altogether wanting: pleas with which pleasing or imposing ideas stand associated: words, such as they are, have been found in *uniformity*, *regularity*, and *strictness:* pleas furnished by the ascendency so extensively prevalent of imagination over reason.

183. Uniformity? What uniformity? *Answer* — That produced by the fabled arrangement in which, between the bed and the men reposing on it, uniformity in length was produced by cutting off the redundant part of each body which was longer, and stretching out to the requisite length, each body which was shorter, than the bed. Here is *uniformity;* and, this being done according to rule, here is moreover *regularity;* and, for the display of the heroic strength of mind, requisite and produced by this branch of the gymnastic exercise, added not unfrequently is the word *strictness:* strictness in the observation of justice-killing and misery-begetting rules.

184. — IX. *Device the Ninth — Mechanical, substituted to Mental, Judicature.*

In so far as, in the production of any effect, *machinery* is employed instead of *human labour*, machinery is employed instead of *mind:* for example, in the shape of a man, an *automaton* figure, such as has been seen, forming writings with its hands.

185. Origin of this device, a problem: a problem from the beginning, proposed to one another by Judge and Co. Purport of all this — how to administer justice without a thought about the matter: reward for solution, — trouble, time, labour, responsibility, — all minimized: meaning always by *time*, Judge and Co.'s time: ditto, profit of course, on this, as on all other occasions, maximized. Nowhere in Euclid is to be found any problem more skilfully and effectually solved than by Judge and Co. this.

186. For proof as well as elucidation, one example will supersede all need of recourse to others. This is — the operation styled *signing judgments*. Machinery and mode of operation, this.

187. Machine, a pair of scales, invented by the demon of chicane, in derision of the scales of justice. Kept in one scale, papers styled *judgments;* kept vacant the other, for the reception of fees. Drop into it the appropriate fee, up rises the appropriate judgment. This the attorney (the plaintiff's attorney) takes in hand, and off it goes to the sheriff for execution. Such is the way in which money, to the amount of hundreds of pounds, thousands, or tens of thousands, is made to pass

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from defendant's pocket into plaintiff's. His lordship, under whose *auspices* this *legerdemain* is performed, what knows he of all this? Exactly as much as his learned brother in Calcutta.

188. To such perfection is the invention brought — so complete the mechanism produced — not so much as even in pretence is it by the *judge* that the effective operation is performed. "*I have signed judgment*," quoth plaintiff's attorney. Nor yet is so much as this true. What *is* true is — that it is by a journeyman of the chief-justice's that the signature is performed: all that the attorney has done is the paying him for so doing. And the journeyman — what knows he about the matter? *Answer* — That an instrument, which, on the *blind fixation principle*, as above, should by defendant's attorney have been put in by a certain day, had not been put in by that same day.

189. Now for a reason for such judicature: where shall it be found? Without so much as a particle of blame on the defendant's part, or even on his attorney's part, in how many cases may it not happen that the failure took place?

190. In a system having for its end the ends of justice — in a word, in the here proposed system, cases forming so many grounds of excuses, would, as in the infancy of English jurisprudence, received under the name of *essoigns*, be looked out for, and a list formed of them. But, suppose even *blame*, and to any amount, might not *compensation*, if to the same amount, suffice? — compensation instead of the ruin, of which execution given to the judgment may be productive?

191. "Persons.... obtaining money.... by false pretences.... may be punished by fine and imprisonment, or by pillory, whipping, or transportation." These words stand part of the marginal abridgment of the first section of the statute 30 Geo. II. ch. 24, § 1, in the statutes at large; which statute is, in Ruffhead's edition of the statutes, referred to under the head of *cheat*, *swindler*, as the name by which, in common parlance, persons so offending are designated. Seeing this, we humbly entreat the Honourable House that it may be considered whether, by the high-seated functionaries by whom fees are obtained by warrants for attendance paid before them, although such attendances were never paid nor intended so to be, money has not at all times been obtained by false pretences; as also to consider whether if there be, either in a *legal* or a *moral* sense, guilt in the obtaining money by such means, the guilt is lessened by the power by means of which such obtainment is effected: whether, if functionaries so seated in those and other judicial situations, were not, to every practical purpose, in this respect, above the law, obtainment by such means would not be an act of extortion, and, as such, a crime; and whether, by the addition of extortion, and, on the part of a suitor, the impossibility of avoiding to comply with the demand so made, the moral guilt attached to the idea of *chicanery*, or say swindling, is in any degree lessened. We acknowledge that it is in the power of the Honourable House, with the assent of the House of Lords and his Majesty in Parliament, not only by connivance, but by express enactment, to give impunity and encouragement to the above, and any or all other persons, who, being constituted in authority, obtain money by false pretences; and this, while persons not constituted in authority are, for obtaining money on false pretences, punished in manner above mentioned: and moreover, that it is fully in the power of that authority of which the Honourable House is a branch, to give impunity and encouragement to every enormity, to whatever extent maleficent, and by so doing to cause the act not to come with propriety under the name of a *crime*, nor the actors to be, with propriety, denominated *criminals*; and accordingly, to cause to be punished, as for a libel, all persons speaking of these under that name: which, accordingly, we forbear to do otherwise than hypothetically, as above: but we humbly entreat the Honourable House to consider whether it would not be more for their honour and dignity to endeavour to repress maleficence in this, as well as in every other shape, than in this, or any other shape, give impunity and encouragement to it.

192. If, instead of this mechanical, mental were the mode of judicature, how would the matter have been managed? *Answer* — Of each individual case, of each individual person concerned, the circumstances would be looked to; of each individual person the feelings taken for objects of sympathy and consideration; respite upon occasion granted; pecuniary circumstances, on one side as well as the other, taken into the account: claims of other creditors not neglected, though not parties to the suit, nor privy to the *application* by which it was commenced.

193. — X. *Device the Tenth — Mischievous Transference and Bandying of Suits.*

Instead of transference and bandying, the one appellative, *removal*, might better have been employed: removal — that is to say, of a suit from one judicatory to another.

194. Removal may be, and is, either — 1. Established; or, 2. Incidental: *established*, when by usage it takes place in every individual suit of the sort in question: *incidental*, when it does not take place but in consequence of some extraordinary operation performed by some person for that purpose; some person usually, if not exclusively, a party on one side or the other of the suit.

195. Under the existing system, when it

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has place incidentally, a *certiorari* is the name of the written instrument by the issuing of which the removal is produced: of this further on.

196. Subject-matter of the established removals, two: namely—I. Incorporeal the *operation*, performed on the occasion of the suit; corporeal the written instruments, brought into existence, or into the custody of the judicatory, in consequence of the commencement given to the suit: including every such account, or say history, as happens to be given of these same operations: as also any such other *things moveable*, if any, as happen to have been presented, or intended to be presented, to the view of the judges, in the character of sources of evidence — that is to say, *real* evidence.

197. — II. In case of *removal*, whether established or incidental, the suit is by some other judicatory *received*: call this the *recipient* or *subsequential*: and for distinction, call the first-mentioned judicatory the *originating*, *original*, or *primordial*.

198. — III. If, after removal, the suit *does not* return to the primordial judicatory, call the removal *transference*, or *simple transference*; if it *does* return, *oscillation* or *bandying*: in case of *bandying*, the transference is followed by *retrotransference*.

199.—IV. Emblems of oscillation, a *pendulum*: of bandying, *battledore* and *shuttlecock*.

200. —V. Where oscillation has place, returns are in any number secured by what has been called *pre-established harmony*: at battledore and shuttlecock, to every return a fresh application of mental power is indispensable.

201. — VI. As to *precipient judicatories*, they have place of course in a number correspondent to that of the oscillations of the pendulum, or the strokes of the battledore.

202.—VII. From the operation here termed *removal*, distinguish that designated by the word *appeal*. Under every system, *appeal* is for *cause assigned*, namely, on the part of the judge of the originating judicatory, either *misdecision*, or *non-decision* productive of the same effect as misdecision: misdecision, either ultimate or *interlocutory*, or say *interventional*: in any case, *misconduct*. In the case of what is here meant by *removal*, no allegation or supposition of any such misconduct has place.

203.—VIII. Under the here proposed system, incidentally, both simple transference and removal have place. But in every case it is for cause specially assigned: thence in the way of *bandying*; not in the way of *oscillation*.

204. Under the existing system, in no case will the removal be seen to have any good cause assigned or assignable. Good cause, none: but as to *effects*, bad effects in abundance; bad in relation to the interest of the community and the *ends of justice*: thence, herein, as above, termed *mischievous*: good, at the same time, in correspondent abundance, relation had to Judge and Co., and their particular and sinister interest: and thence in relation to the actual ends of judicature.

205. To return to the *here proposed* system, and to the good effects which under it are deducible from the removal in question, and would accordingly be deduced from it. *Execution*, *evidence*, *intercourse*; — to one or more of these objects will be found referable everything that can be said of the *operations* or *instruments* which have place in judicial procedure.

206. — I. *Execution*, to wit, of the enactments of the *substantive* branch, or say the main body of the law: under which head is comprised everything that does not belong to the *adjective* branch, or say *procedure*: enactments, really existing in the case of legislation-made, imaginary in the case of judge-made law.

207.—II. *Evidence*, for the purpose of forming a ground for what is done in the way of *execution*.

208.—III. *Intercourse*, to wit, between the judge and all other persons concerned, for obtaining evidence and effecting execution: including the securing the means of such intercourse from the commencement to the termination of the suit.

209. — IV. Giving, to all these several objects, accomplishment, with the minimum of delay, expense, and vexation, to the individuals concerned.

210. — I. First, as to *execution*. For this purpose, need of removals — of removals in a number altogether unlimited — may have place. In proof of this, a single example may suffice. *Judge-shires* (as herein proposed) say two hundred. For whichsoever purpose — say satisfaction to a party wronged, or punishment — seizure and sale of defendant's effects requisite: within any number of these judicial territories, so many portions of these effects may happen to be situated. In this case, even though perfect intercommunication of jurisdiction was to have place between the judge of each judge-shire and the judge of every other; still preponderant convenience might require, that for this purpose employment should be given to the power of the judge of this or that *subsequential* judge-shire.

Originating judge-shire, or say judiciary, suppose in London: of the effects, one parcel in Liverpool. Of seizure and sale, the purpose might perhaps as conveniently be fulfilled by mandate from the London judge-shire. But, for the discovering what they are, and in whose possession situated, suppose *evidence* necessary, and that evidence composed of the testimony of a person resident in Liverpool: here, expense and delay in no small proportion will be saved, if it be by a Liverpool

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judge instead of the London judge that the examination of the Liverpool witness is performed.

211.—II. As to *evidence*. In regard to evidence, what is desirable is, that, in each individual case, whatsoever evidence the case affords, be obtainable, in whatever part of the globe it happens to be situated; whether in England, Ireland, Scotland, a distant dependancy, or a country under foreign dominion: obtainable with the best security for its completeness and correctness, and with the least delay, expense, and vexation: with least delay, and accordingly from persons and things in any number, at the *same time*.

212. Good effects in this respect obtainable from removal, and not otherwise, these.—

I. Obtainment of evidence not otherwise obtainable.

213.—II. Obtainment of it in the *best shape*, that is to say, that which it assumes when elicited in the *oral* mode: when, otherwise, it could not be elicited but in a less instructive shape; namely, when elicited in the *epistolary* mode.

214.—III. Obtainment of it from its several sources, namely, persons and things, in any number at the same time, for the purpose of the same suit; and, in each instance, in that one of the two modes which, on that individual occasion, is best adapted to the aggregate of the purposes of justice.

215.—IV. Accomplishing the elicitation, not only with the minimum of delay and vexation; but that minimum laid, in each individual instance, on the shoulders best able to bear it: namely, those of the public at large, in so far as practicable without preponderant evil in the shape of addition made to the expense.

216. For all these several purposes, removal of the suit from the originating judicatory to some other or others, is eventually necessary; that is to say, in so far as the means necessary for the accomplishment of these three several objects respectively in the best mode, fail of being in the power of the *originating* judicatory, and at the same time are in the power of some other, which accordingly is constituted the *subsequential* and *recipient* judicatory.

217. Of the benefit in all these shapes, a necessary instrument will be seen to be the division of the local field of judicature into the above-mentioned compartments, styled on this account *judge-shires*: extent of each judge-shire limited, in such sort that, the *justice-chamber* being in the centre, every inhabitant, not disabled by infirmity, may, during the sitting of the judicatory, be in attendance therein, without passing the night elsewhere than at his own home.

218. Mode of elicitation, oral or epistolary: places, the originating or subsequential judicatories, in any number, according to the exigency of each individual case.

219. Eventually subsequent to epistolary, oral elicitation: now for the first time this arrangement: object of it, check upon, security against, falsehood.

220. Where, for correctness and completeness of the whole body of evidence, the confrontation of all persons speaking to the same fact is regarded as necessary,—confrontation accordingly: not otherwise: place, either the original, or some subsequential judicatory.

221. So, order in respect of time of elicitation as between the several examinands: that is to say, co-plaintiffs, if any,—defendants, and other persons at large, in the character of extraneous witnesses.

222. Now, as to *retro-transference* and *retro-reception*, or say, return of the suit to the originating judicatory. Demand for it will in some instances have place, in others, not: purpose of it, continuation of the series of *operations*, by which commencement had been performed.

223. By all these arrangements taken together, minimized will be seen to be the burthen of the expense: that is to say—1. By minimization of the extent of the judgeshire, the quantity of the expense, of journeys and demurrage; 2. By transferring to the letter-post the conveyance of such of the written instruments as are contained within the compass of an ordinary letter, expense of intercourse in so far minimised; 3. By laying on the shoulders of government, and thereby of the public at large, that same expense, together with the whole of the remuneration of all judicial functionaries,—minimized will be the *hardship* of the burthen, by its being laid on the shoulders best able to bear it. Thus provided for by far the greatest part of the expense: other part, by fines for delinquency on the part of defendants, where there is no individual specially wronged, and for *misconduct* in the course of the suit, on the part of suitors on both sides: particularly if in the shape of falsehood: always remembered, that the burthen of compensation has the effect, and even more than the effect, of money to the same amount exacted, and applied to the use of the public, or in any other way disposed of.

224. By the *evidence-holder*, understand the person whose testimony is requisite, or who is in possession of the *writing*, or other *thing* which is the source of the evidence. When of this evidence-holder, the residence is at the time in the dominion of a *foreign* power, elicitation in the epistolary mode may be practicable or not with advantage, according to circumstances. Practicable it will be in so far as, by any means, he happens to be in effect subject to the power of the judicatory: means of such subjection, subject-matters of

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property, whether *moveable* or *immoveable*, in possession or expectancy, certain or contingent, so circumstanced as to be susceptible of seizure by the judge. So, as to subject-matters termed *incorporeal*, that is to say, *rights* of all kinds. From the impracticability of making this mode of elicitation available in some cases, no reason assuredly can be deduced, for the not employing it in any case in which it can be made available.

225. In so far as, for any of the above purposes, on any of the above occasions, removal in each of the two modes, with or without retro-transference to and retro-reception on the part of the originating judicatory, has not place, — manifest it will now (it is hoped) be, that the jurisdiction of the whole territory cannot but be, as the phrase is — *lame:* and in what a multitude of its organs and muscles jurisdiction is under the existing system lame, and to all good purposes impotent, will be manifest to every person, in proportion as his conception of that same system is correct and complete.

226. For extraordinary removal, sole case this:—By a judicatory, or by a tribunal of exception, cognizance taken (suppose) of a suit, which lies not within its competence; here will be a case — either for the *extinction* of the suit altogether, or for the *removal* of it into the sort of judicatory, to which (those exceptions excepted) cognizance is given of all sorts of cases. Tribunals of exception these: — *Military* judicatories for the establishment of appropriate discipline among military functionaries, in both branches — land branch and sea branch — of that service: *ecclesiastical* functionaries (in a country in which an ecclesiastical establishment has place) for the establishment of discipline among ecclesiastical functionaries.

227. Removal in both shapes will, in some cases, of necessity, have place in the same judgeshire; for example, as between the judge *principal* and judge *depute*,—in case of death, simple *transference:* in case of temporary inability through illness—perhaps simple transference—perhaps oscillation or bandying, may be the more eligible course.

Only that it may not be supposed to be overlooked is this need mentioned.

228. Enter now the existing system. Short account of it, as to this matter, this: — The *purposes* for which, — the *occasions* on which, so as to be conducive to the ends of justice — say in a word *useful*, — the removal will take place, have been seen. Under the existing system, for none of these purposes, on none of these occasions, has it place: on none but where (the rare case — that of applying a check to usurpation alone excepted) it is worse than useless.

229. Intricate is here the complication, vast the labyrinth constructed by it: to let in upon the whole expanse the full light of day, would be an endless enterprise: only, by way of sample, upon a hole-and-corner or two, can a few rays be endeavoured to be cast.

230. — I. Sample the first. Mode of established removal, the simple transference mode. 1. Class of cases and suits, that called *criminal*. Species of cases, that called by the nonsensical term, *felony:* thus denominated from the sort of punishment attached to it: nonsensical, because no idea does this denomination afford of the *nature* of the evil; nor therefore of the *cause* for which it is thus dealt with.

231. Course taken by the suit in these cases, this: —

Case the first: — Judicatory in which the suit is tried, the original common-law judicatory, having for its seat, in a country cause, the assize town.

I. Originating judicatory, that of *justices of the peace*, one or more, acting otherwise than in general sessions, as above.

II. First recipient judicatory, the *grand jury* for the county, sitting at the place where the trial is about to be performed.

III. Second and last recipient judicatory, that in which the *trial* is performed, as above. In this case, it is in that same town that the judgment is pronounced. Place of execution varying; but no return in any case to the originating judicatory.

232. Note that, in the case of *homicide* — a crime belonging to this same class of *felony* — an originating judicatory, taking cognizance antecedently to the above, is the court called the Coroner's Inquest: judge, the *coroner:* with a jury called the *inquest jury*.

233. Of these removals, note now the consequences in regard to *evidence*. Short account this: Shape in which the evidence is elicited, more or less different in all these cases; the mass elicited on the first occasion made no use of either in the second or the third: the mass elicited in the second made no use of in the third: the two first masses — after the expense, labour, and time, employed in the elicitation of them, thrown away.

234. Even of this third mass no use is made for any purpose subsequent to the *verdict*. For, being elicited in the oral mode, it is not committed to writing, by authority;—only by accident, that is to say, by this or that individual, by whom the profit on publication is looked to as affording a sufficient return for the labour and expense of *minutation*.

235. In one class of cases, the suit does receive its termination in the same judicatory in which it has received its commencement: these cases are of the number of those consigned to the cognizance of a justice of the peace acting singly, or two or more in conjunction, out of general sessions. Now then,

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supposing the judicatory aptly constituted, why (except in the cases provided for under the herein proposed system as before) why should it not so do in these, and, in a word, in all other cases? And where is the case, in which the judicatory should be otherwise than aptly constituted?

236. In the originating judicatory—namely, that of the justice of the peace acting singly, — sometimes a *part* only of the stock of evidence which the individual can afford, will have been elicited — sometimes the whole of it, as it may happen; but where the whole of it does happen to be elicited, the suit is not the less sent in to those other judicatories.

237. Moreover, where, after the whole of the evidence which the suit affords has been heard, including the evidence on the defendant's side, — be this evidence in its own nature ever so satisfactory, and as against the defendant conclusive, yet thereupon, when the suit has been transferred to the secret judicature, — the grand jury, it is liable to be, and not unfrequently is, decided the opposite way, on evidence heard on one side only: meantime evidence-holders have had from a day to half a year given to them, — to go off of themselves, or to be bought off,— and, in prison, the defendant, guilty or not guilty, that same time, for *contaminating*, as the phrase is, or being contaminated, or both: if not guilty, there to moan under the oppression, thus, for the benefit of Judge and Co., exercised on him: and, whether he be guilty or not guilty, the country is made to suffer under the expense of keeping him in a state of forced idleness.

238. Cases in which removal in the oscillation or bandying mode is employed, these:

All suits termed *civil*, commenced in any one of the three common-law Westminster-hall courts.

239. In Westminster Hall, they take their commencement without elicitation of evidence: their commencement, viz. in the office of a clerk: mode, the mechanical mode, as above; the judges not knowing anything about the matter: applications, incidental and accidental, excepted; for example, for *leave to plead*, or for *putting off the trial*.

240. For elicitation of evidence, in a country cause, off goes the suit to an assize town, there, as the phrase is, to be *tried;* to wit, by the elicitation there performed, by a judge dispatched thither from one of the Westminster-hall courts, with a petty jury.

241. The trial performed, back it comes to the judicatory from whence it had emanated; and there it is that, in the mechanical mode as above, it receives judgment.

This done, then back again it goes to the same county for *execution;* but, for execution, the office it goes to is — not any office belonging to the court in which it originated, nor that in which the trial was performed: it is the office of the sheriff of the county in which the suit was tried.

242. Such is the operation of the *judgment*, when it has for its subject-matter, a *person*, or a *thing moveable* or *immoveable:* whereupon the officer causes hands to be laid upon the person or the thing; and, in the ordinary course, does by that same person or thing what by the judgment he has been bid to do. But, in some cases, the suit has for its subject-matter nothing on which hands can be laid; — nothing but a fictitious entity — an incorporeal thing.— to wit, a *right*, or an *obligation;* in which cases, as *execution* consists in the extinction of the obligation or the right, *words* contained in the judgment suffice — words, without acts and deeds, for the performance of it.

243. Now for removal upon an almost universal scale — removal by *certiorari*.

Exceptions few excepted, from all courts a suit is, at any stage, removable into the King's Bench. Instrument of removal, a writ styled in the Judge and Co.'s dialect of the flash language, a *certiorari:* in the language of honest ignorance, a *sisserary:* witness the threat, "I'll fetch you up with a sisserary."

244. Eminently mischievous to the community at large, correspondently beneficial to Judge and Co., is this same monster. Mischief it does in two ways: — 1. By its operation when not killed; 2. By its dead carcase when, by a clause in a statute, killed. Of such as are let live, the effect is — from a less expensive, and comparatively to Judge and Co. unprofitable, judicatory, to send up the suit to a more expensive and more profitable judicatory: as to the *carcases*, they are those of the *certioraris*, killed in embryo, or *endeavoured so to be;* that is to say, in and by every statute, by which additional jurisdiction is given to a justice of the peace, or other summarily acting judicatory. In this case, one of two things: — either, by the insertion of the clause by which the death is produced, so much rubbish is shot down into the statute-book, or else danger of inefficiency is left by the non-insertion of it.

Note by the bye, that in every such statute, this is but one of a string of efficient causes of inefficiency, which must be thus dealt with, or the like effect will follow.

245. Yes, *endeavoured* to be: for (as law-books show,) not in every instance has the endeavour been successful: on this occasion, as on all others, in comes the established habit of Judge and Co.: when a clause of an act of the legislature is brought before them, they pay obedience to it, or run counter to it, as they feel inclined: *moulding* the law, is among the phrases on this occasion employed.

246. Now for the *instrument* and *document*,

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which, in case of *removal*, whether *established* or *incidental*, is the corporeal subject-matter of this same operation; the *suit* being the incorporeal subject-matter of it. Of this instrument, the proper contents will be composed of a *statement*, or say *history*, of the several *proceedings*, carried on in the course of the suit: proceedings, — that is to say, appropriate operations performed, and written instruments framed and issued or exhibited: contents, for various purposes, *proper:* for the purpose of appeal, and in so far as that is in contemplation, altogether indispensable.

247. Of this history, by far the largest, the bulkiest part, will consist of an account of the *evidence:* to the evidence which by this means, for this purpose, has, in the course of the suit, by the correspondent operations been elicited in the word-of-mouth mode: — the expression given to it by the pen, by the *taking it down*, as the phrase is, or in one word, *the minutation* of it, will constitute a *written instrument*.

248. Hereupon, in the instance of each individual suit, will arise two questions: — 1. Shall the minutation be performed? 2. When it is performed, shall the result be, for any and what length of time, preserved? To both these questions, the proper answer will depend — upon the proportion between the *profit* in the way of *use* elicitable from the document, and the *loss* composed of the expenses: always understood — that wheresoever appeal is in contemplation, *preservation* will of course not be less necessary than *creation*.

249. As to all matters besides the evidence, so small in comparison will in every instance be the bulk of them, that of what is necessary to either of these operations, of no part can the expense be grudged.

250. Obvious as may seem these observations, not so obvious are they as to be superfluous: for by them will judgment have to be pronounced on the practice of the existing system in relation to the subject-matter of them.

251. Enter now accordingly, the existing system. To the difference between courts of record and courts not of record, prodigious is the importance attached by it. Mountains, in the survey taken of them, the courts of *record:* mole-hills, the courts *not* of record.

252. Now as to the treatment given by the two sorts of courts to the mass of evidence belonging to the suit.

In the record of the courts of record, not a syllable of this same evidence is ever inserted: and in particular, in those of the Westminster-hall courts—the King's Bench, the Common Pleas, and the common-law side of the half common-law, half equity court — the court of Exchequer.

253. In the records of the courts not of record, every syllable of the evidence elicited. Witness—1. The Chancery court: including its subordinate branches, the Vice-chancellor's and the Master of the Rolls' court; — 2. The courts held by the bankruptcy commissioners, and which are also courts subordinate to the Chancellor's court; — 3. The equity side of the Exchequer court.

254. Between the real state of things, and the pretended state, as intimated by the denomination thus given, — whence this seemingly strange difference? *Answer* — By the common-law court it is that this nomenclature was framed. Courts to which the depreciatory denomination was attached by them, the shops of their rivals in trade: rivals, with whom for a length of time they had fierce battles; till at last an accommodation was come to: — of course, at the expense of customers, and of those who should have been, but by the expense were kept from being, customers.

255. Of the particulars contained in the instrument styled the record, as framed in the courts self-styled courts of record, what shall be the account given? Short account this: —

I. Written pleadings, which ought not to have been exhibited.

II. Mendacious assertions, by word of mouth and in writing, which ought not to have been uttered.

III. Delays such as have been seen, which ought not to have been made.

IV. Ulterior delays — fruits, such as have been seen, of the precipitation established.

V. Products, of the blind fixation as above — days appointed, for operations, which it was foreknown could not on those several days respectively be performed.

VI. Operations, which, in pursuance of the system of mechanical, *vice* mental judicature, are stated as having been performed by the judge, though, if performed at all, it is not by him that they have been performed.

VII. Removals made, which ought never to have been made.

256. Prefaced the whole by a fabulous history of *apparitions:* statements asserting *appearances* as having been made by unhappy defendants (and in these courts what defendants are not unhappy?) who from beginning to end never did appear: they not knowing, nor having it in their power to know, what to do, had they appeared: and knowing but too well that, had they appeared, their appearance would have been of no use.

257. As to the written pleadings, — note, that though otherwise than in an eventual, indirect, and disguised way, as above, the effect of evidence is not given to them, — not unfrequently more voluminous are they than the evidence is, or would have been if properly elicited.

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258. As to *suit* and *record* taken together, — under the existing system, general conclusion, as intimated at the outset, this: To any useful purpose, removal none: to purposes worse than useless, removal in abundance.

259. — XI. *Device the Eleventh — Decision on grounds avowedly foreign to the Merits.*

☞ For the matter belonging to this head, reference may be made to the Full-length Petition.

260. — XII. *Device the Twelfth — Juries subdued and subjugated.*

☞ For the matter belonging to this head, reference may be made to the Full-length Petition.

261. — XIII. *Device the Thirteenth — Jurisdiction split and spliced.*

In the Full-length Petition (pages 482 and 483) have been seen, the sorts of courts, splinters from the one original *Aula Regis*, each with a different scrap of jurisdiction. Number, not less than thirteen: without reckoning others which in process of time came to be superadded. Number of *judges* in these respectively, from *one* to an undefinable greater number: species of functionaries, acting in various ways in *subordination* to the judge, in one alone of these same thirteen sorts of courts (as per Full-length Petition, page 400) more than twenty; not to speak of the other sorts of subordinates acting in the *other* sorts of courts: all these species, instead of the four or five, which, in every court would (as per page 491) with the addition of no more than two or three others in some special cases, be sufficient.

262. That confusion may be still worse confounded, behold now a sample of the diversification which, in these same judicatories with their additaments, the denomination given to the character of *judge* has been subjected to: the function belonging to that character being disguised, under and by most of those several denominations: a sample only — not a complete list: for the labour of making it out would have been unrequited, and unendurable. Here they are —

1. Lord High Chancellor.
2. Lord Keeper of the Seals.
3. Lord Commissioner of the Great Seal.
4. Master of the Rolls.
5. Vice-Chancellor.
6. Lord Chief-justice of the King's Bench.
7. Lord Chief-justice of the Common Pleas.
8. Lord Chief-baron of the Court of Exchequer.
9. Puisne (pronounced puny) Justice of the King's Bench and Common Pleas.
10. Puisne Baron of the Exchequer.
11. Master in Chancery.
12. Master of the Crown-office.
13. Prothonotary of the Common Pleas.
14. Remembrancer of the Court of Exchequer.
15. Commissioner of Bankruptcy.
16. Commissioner of the Insolvency Court.
17. Justice of the peace.
18. Chairman of the quarter-sessions of the peace.
19. Recorder.
20. Common Serjeant.
21. Commissioner of the Court of Requests.
22. Privy Counsellor.
23. Chancellors of the duchy of Lancaster: of the bishoprick and county palatine of Durham.
24. Vice-chancellor of a University.
25. Lord Delegate.
26. Dean of the Arches.
27. Chancellor of an Episcopal Diocese.
28. Surrogate of a Diocese.
29. Commissary of an Archdeaconry.
30. Assistant-barrister (in Ireland.)
31. Grand Juryman.
32. Constable of the night.
33. Annoyance Juryman.
34. Coroner.
35. Steward of Manor Court.
36. Warden of the Stannaries.
37. Warden of the Cinque Ports.
38. Vicar-general of the Preachers. (Quere, whether judicial?)
39. Official Principal of the court of Arches.
40. Master of the Prerogative Court.
41. Master of the Faculty Office. (Quere, whether judicial?)
42. Official principal to various deaconries and archdeaconries.
43. Commissioner of the Hackney Coach Office.
44. Commissioner of Excise.
45. Commissioner of the Customs.
46. Commissioner of the Audit Office.
47. Auditor-general (of Greenwich Hospital.)
48. Commissioner of a Court of Claim.

263. As to the confusion in which the enumeration thus made of them is involved, — so far from being a *blemish*, it may be stated as a *merit:* serving, as it does, to render the portrait the more appropriate and perfect a representation of the original.

264. Behold another evil, produced by the jurisdiction-splitting, and not brought to view in the full-length petition. This is — the all-pervading denial of justice, produced by the exclusion put upon one or other of the two remedies which wrong in every shape calls for: namely, the *satisfactive* and the *punitive*. Modes of procedure, the *fissure* makes two: — the one styled *civil*, the other *criminal:* in and by the *civil* you may demand the *satisfactive;* in and by the criminal, the *punitive:* in some cases, you may have the one; in other cases, the other: but with scarce an exception, both together, — either by one and the same

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suit, or by two different suits, — you cannot have. As to courts, — the *satisfactive* remedy, you are admitted to demand at the hands of either of two courts — the King's Bench or the Common Pleas; not to speak of the Exchequer: the *punitive*, you are not admitted to demand in more than one of these two courts, namely the King's Bench. Moreover, there is another sort of court in which in some cases you may demand the *punitive*, namely the provincial court — the *quarterly-sittings* justice of peace court: whether, after obtaining in this court the *punitive* remedy, you can take your chance for obtaining in one or other of the two metropolitan courts, the *satisfactive*, — say who can; never yet (it is believed) has the experiment been made. Moreover, from this *local* court, the suit may, without reason assigned, by means of a sort of a *crane* termed a *certiorari* (as per 244,) be raised up into one or other of these two higher and more expensive courts: and this, either by the author of the wrong, or by you — the party wronged.

265. Of this severance, by co-operation and a sort of tacit concert between Judge and Co. on the one hand, and the rest of the ruling and influential few on the other, — advantage was taken, to give additional strength to their power of exercising depredation, as well as oppression, at the expense of the subject many. By the high price put upon the chance of receiving the article at the hands of Judge and Co., the satisfactive remedy, in so far as not obtainable but by procedure in the *regular mode*, was effectually denied to the vast majority of these same subject and oppressed many. So far as dependent upon *law*, these that were unprivileged were thus laid completely at the mercy of the thus privileged classes, in all cases to which the application of the *punitive* remedy did not extend itself.

266. Dear, it is true, was the price; still, however, in the eyes of a large proportion of those to whom the privilege was thus granted, the advantage was and is worth the purchase. By each man the privilege is possessed, and, whether exercised or no, exercisable at all times, all his life long, and to a certainty: whereas the inconvenience of paying for it, namely by the expense of going to law, or being at law, — is a danger, the magnitude of which is, by each man's confidence in his own good fortune, concealed from his regards.

267. This being the imposed price, — how happened it that the intended victims were not deprived of the benefit of the punitive remedy, as well as of that of the satisfactive? Answer — This they could not be, without an all-comprehensive sacrifice of all security against wrong, — a sacrifice in which the sacrificers themselves, as well as the intended victims, would be included. To the security of the privileged classes it was necessary that not only they themselves should be preserved from depredation and oppression altogether, but that the unprivileged classes should be preserved, as far as might be, from depredation and oppression at the hands of one another: otherwise production would cease; and with the *subject-matter* of depredation, the *power* of exercising it. To this purpose it was therefore necessary, that application of the *punitive* remedy should, in a more or less considerable degree, be kept free from the clogs, by the strength of which the *satisfactive* remedy had been rendered unattainable to the unprivileged and devoted many.

268. How to effect the severance was however the difficulty. Of this difficulty, the primeval *penury*, brought to view at the outset of the full-length petition, had been certainly *one* cause: the want of sufficient discernment and talent, perhaps, another. Whichever were the case, so it happened that the machinery employed in the application of the *punitive* remedy, was no other than that employed in like manner upon the *satisfactive*: whence it happened, that the load of factitious delay and expense, laid upon the one, pressed also upon the other.

269. Without the fiat of a grand jury, for example, *caption* of the prisoner could not take place; and, except at the metropolis, no grand jury sat, but at the *assizes*: and the assizes were not held oftener than twice a-year in any county, nor than once in some counties; nor in any county did they last more than two or three days: and, suppose the *caption* effected, *trial* could not take place till the next assizes. What, as to offences, were the consequences? Abundant as they were upon the continent, criminal offences operating by force, were in England in still superior abundance. In the time of Henry VI., Fortescue, then chancellor, takes notice of this superiority, and makes it matter of boast. In the reign of Henry VIII. (as may be seen in Barrington's Observations on the Statutes) no fewer than 72,000 individuals suffered death by hanging, — about 2000 a-year upon an average: this, out of a population not half so great as at present.

270. Of the marriage of Queen Mary with Philip of Spain, one consequence was — the putting England, in this respect, upon a level with the continent. *Rome-bred* was the species of law, by which the continent was then, as now, principally governed: and, under Rome-bred law, persons accused of crimes might be apprehended *at all times*. By a statute of Philip and Mary, this power was given to justices of the peace. In the case of a criminal suit, thus was caption, with *commitment* accelerated: still *trial* remained at an undiminished distance. But, how inadequate soever to the purpose of deterring others, — commitment made in this mode would, of itself, so long as the incarceration continued, give effectual security as against future offences on the part of the same delinquent: for,

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while a man is *in* jail, he cannot commit crime *out* of it. Sagacity neither was nor is wanting to perceive this incontestable truth.

271. With this arrangement, the contracting parties — Judge and Co. of the one part, and the rich and powerful of the other part — were, and continue to be, well satisfied. True it is, that upon this plan, this so regularly and uniformly applied lot of suffering of about twenty-six weeks, or fifty-two weeks, applied without regard to quality of guilt, is, — when, in consideration of quality of guilt, a few weeks, and not more, ought to be suffered, — applied in addition to those few weeks. True it is, moreover, that it is applied to the innocent who ought not to suffer at all. True it is, moreover, that all this while the innocent part of the thus forcibly *mixed company*, thus dealt with, are (as the phrase is) *contaminated;* and the guilty are occupied in contaminating as well as in being still further contaminated. "But what care I for all this?" says to himself noble lord or honourable gentleman; "none of it can ever fall upon me or any friends of mine. No danger is there of our being thus taken up, and if we were, we should be bailed of course. Then, as to the contamination, this could not be put an end to without innovation; and that would be out of the frying-pan into the fire. Besides, there is a satisfaction in having thus to talk of *contamination:* as it is the poor alone that are exposed to it, it gives a zest to the pleasure we feel in the contempt we pour upon them; it magnifies the great gulf which is fixed between them and us." Such is the almost universally established sentimentality and correspondent language in the upper regions: as if by far the most maleficent of contaminations were not that, which (as hath over and over again been demonstrated) in these same upper regions, and in particular, in the part occupied by Judge and Co. has its source.

272. Thus it is, that over and above the power of depredation, as well as oppression, which (from the nature of things) the rich and powerful, as such, unavoidably possess, at the expense of the poor and helpless, — they possess this vast additional power derived (how indirectly soever) from positive law.

273. By this confederacy it is, that the most powerful obstacle to law reform is constituted. Judge and Co. having, by the price put by them upon what is called *justice*, placed the satisfactive remedy out of the reach of all but the favoured few, — noble lords and honourable gentlemen run in debt, under the assurance of having it in their power to cheat creditors: and thus by the higher orders are the lower orders spoiled, as by the Israelites the Egyptians. So completely, by a mixture of pride and cupidity, is all sense of shame capable of being extinguished, that right honourable and noble lords have been heard to say, and without contradiction to insist, that for small debts, in this case, there ought to be no remedy. Why no remedy? Because affording a remedy against injustice encourages extravagance: as if, with this or any other encouragement that could be given to extravagance, the extravagant could ever be the majority; as if, without consent on his part, wrong in a pecuniary shape could not be done to a man in a variety of ways; as if dishonesty were not still worse than extravagance; as if, whatever were the amount, the loss of what is due *to* him were not a greater evil to any man, than the payment of what is due *from him* to another is.

274. In pursuance of this same policy, property, in a shape in which noble lords and honourable gentlemen have more of their property than in all other shapes put together, is exempted from the obligation of affording the satisfactive remedy — in a word, from the obligation of paying debts, while property in these other shapes is left subject to it. Noble lords or honourable gentlemen contract debts, and instead of paying them, lay out the money in the purchase of land: land being exempted from the obligation of being sold for payment, creditors are thus cheated. Noble lord's son is too noble, honourable gentleman's son too honourable, to pay the money, but not so to keep the land.*

275. For the like reasons, mortgages and other charges upon land are not to be, in an effectual way, by registration or otherwise, made knowable. Why? Because, if they were, money, of which it were known that if lent it would not be recovered, would not be lent; extravagance would thus be lessened; swindling, as above, would thus be lessened; and, in a country in which a man who is rich and not honest receives more respect than a man who is honest and not rich, — obtainment of undue respect for opulence not possessed would thus be lessened.

276. For *Device* XIV. — *Result of the fissure — Groundless Arrests for Debt.* — See the Full-length Petition.

277 or 80. *Supplement to Device* V. *Oaths necessitated.* (Full-length Petition, pp. 454 to 467. Abridged Petition, p. 516, art. 79.) — Consummation of the mass of evil shown to be produced by this device as above. By this one instrument, evil is capable of being produced, more than by all others put together. For by it, besides the evil produced by itself, eternity is capable of being given to the evil produced by all those others.

278 or 81. Even without this addition, sufficient for any ordinary appetite for the pleasure of maleficence, should be the power of the singly-seated absolutist. Infinite, however, is the addition, which the power of imposing oaths is capable of making to it.

* By 3 & 4 W. IV. c 104 (29th Aug. 1833,) freehold and copyhold estates were rendered liable for simple and contract debts. — *Ed.*

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279 or 82. Extirpation of all heretics — extirpation of all liberals, — conceive a Don Ferdinand, conceive a Don Miguel, bent upon procuring for himself these two gratifications — either of them, or, which would save trouble, both together: — for the accomplishment of these objects, added (suppose) the obligation of making re-application of those tortures, the application of which used to be common for some of these same purposes. — Nothing can be more easy. Two formularies for this purpose are already to be had from geography and history. He goes to work thus: An appropriate oath of the promissory kind is framed. All public functionaries take it: functionaries, administrational — judicial — military. All schoolmasters and schoolmistresses take it: they administer it — all of them — to their respective boarders and scholars. All husbands administer it to their wives: all parents, to their children, who by the form of it stand engaged to transmit it to their children, and so on to the latest posterity. Behold here a sort of *estate tail*, for the barring of which no *fine*, no *recovery* is available.

280 or 83. Dangerous enough in an absolute monarchy, of which there are so many examples, — it is still more dangerous under a pure aristocracy, of which there is one example, and under that composed of monarchy and aristocracy, of which there is another example. A monarch has caprices: an aristocracy has no caprices. By the monarch of the day, the oath imposed one hour, may be taken off the next hour. The oath imposed by the monarch of one day may be taken off by his successor — the monarch of the next day. Under an aristocracy, relief has no such chance. Long before the aristocracy-ridden monarchy of England had begun to lighten the yoke of religious tyranny on the necks of the Catholic subjects, Austrian monarchs had nearly removed it off the necks of their Protestant subjects.

281 or 84. To the *extent* of the evil produced by this instrument, addition may be made day after day: and, as to *duration* — if by it the existence of the evil can be secured for two days together, so may it be to the end of time.

282 or 85. Those, who are so fond of it, when employed, in giving support to their own sinister interests or prejudices, on one part of the field of law, — might do well to think, how capable it is of being employed against those same interests or prejudices, on another part of that same field. A radical, who wishes to see it continued to be employed against catholicism, should have considered how capable it is of being employed against radicalism. Against radicalism? Yes: or against any the smallest melioration in the form of the government.

283 or 86. Lord Castlereagh and Lord Sidmouth, when they enacted the Six Acts, should, after making a few more such acts — whatsoever were necessary to complete their plan — have taken this method of giving perpetuity to it. Without touching the invaluable *coronation oath*, an amendment tacked to it would have done the business at once. The heavier the yoke thus laid on the necks of the subject many, the more exquisite would then have been the tenderness of all royal consciences.

284 or 87. Will it be said — "No: formidable as the instrument is, the application made of it will never be carried to any such lengths?" Let him that says so, say — at what point it is that the application will be sure to stop. Let him say — at what point the appetite for power will be sure to stop. This point found, let him say — whether, after having reached that point one day, it may not go on the next.

285 or 88. Observations these — which, by their importance, may, it is hoped, atone for the irregularity committed by the insertion in this place given to them.

MORE ABRIDGED PETITION FOR JUSTICE.

To the Honourable the House of Commons; the Petition of the Undersigned,

SHOWETH,

1. THAT, so far as regards the law in general, and the constitutional branch in particular, the main object of attachment and veneration is — the law called *Magna Charta*, the earliest of all statutes now recognised as such; and upon occasion, as such it is spoken of by all legislators and all judges.

2. That although, in large proportion, the happiness of us all does in truth depend upon the degree of observance given to a certain clause of it; yet, in respect of that same clause, is this same fundamental law grossly, notoriously, and continually violated: violated by all judges who are styled *judges*, and that violation connived at by legislators.

3. That though, in and by this clause it is said in so many words — "To no one will we *delay*, to no one *sell*, to no one *deny justice*;" meaning by justice, judge's service — the sort of service performed by a judge as such: yet is this same *justice*, in all common-law, equity,

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and ecclesiastical courts, wilfully *delayed* to all — *sold*, at a vast and extortious price, to those who are able to purchase it, — and *denied* to all those who are unable: in which sad case are the immense majority of the whole people.

4. That the sale, thus made of the service performed by a judge, was produced, and is continued, by the mode in which remuneration was made for such service: the matter of such remuneration coming out of the pockets of those by whom alone the benefit of such service was supposed to be reaped, and increasing with the number of the official operations, performed, or falsely said to be performed, — and the number and length of the written instruments framed, or falsely said to be framed, — on the occasion of such service: of which remuneration, each distinct portion so received is styled *a fee*.

5. That, setting aside the case in which he is paid (as by money in the shape of salary,) without prospect of increase of pay by length of time, — there are two modes in which a workman of any sort is paid for the service done by him, or supposed to be done: one is that in which he is paid for the quantity and quality of the *work* done, or supposed to be done; this is called payment by the job, and the work is called *job-work*: the other is that in which he is paid according to the *time*, during which he is occupied or supposed to be occupied in doing the work; this is called payment by the time, and the work is called *time-work*.

6. That, for letting in operations upon operations, and written instruments upon written instruments, and applications for enlargement of the time,—a proportionate quantity of *delay* has been and is made necessary: and here may be seen the sinister interest in which the factitious part of the delay has its source.

7. That, in whichsoever mode the payment is made, — where, in official service, there are masters and servants (styled superior and subordinate) occupied or supposed to be occupied in the same work, — there are two modes in which the benefit of such remuneration finds its way into the pockets of the superior — in the present case, the *judge*: one, according to which each fee is paid to himself; the other, according to which the fee is paid to the possessor of some office under him, of which he has the patronage; and that thus, it being the interest, and put into the power, so has it been and continues to be the practice, of judges — to raise to the utmost the price paid, by the suitors, for the service of the subordinates of these same judges.

8. That the same community of sinister interests, which, in the case of the official class of lawyers, has place between superiors and subordinates, has place between the whole of the official class and the whole remaining class (that is to say, the professional) their emolument being composed of payment made for service done, or supposed to be done, to their respective clients — the parties: the more suits the one class gets, the more suits the other gets; and the more money the one gets, the more money the other gets, upon each suit: and thus it is that, by the judges, to swell their own emoluments to the utmost, the suitors, who would be sufficiently vexed by the suit without being taxed, are taxed three times over: by payments to the judges, by payments to their subordinates, and by payments to the professional lawyers: the classes of whom are, for the same sinister purpose, multiplied without limit: and not only without use to, but greatly to the detriment of, truth and justice.

9. That, while thus benefiting themselves by the *sale* of justice, the same judges — by the same means — produce benefit to themselves by the *denial* of justice; for that, in so far as a judge saves himself from being called upon to perform his appropriate service, without losing money by so doing, — he obtains *ease*; and, as the total amount of the remuneration depends—partly upon the number of the suits, partly upon the amount of profit upon each suit, — and the number of the purchasers decreases as the price increases, — the price demanded will consequently *be* always as high as, without lessening the total profit, by lessening the number of the purchasers, it can be made to be. Here then, in the sale of what is called *justice*, as in the sale of *goods*, a constant calculation has, at all times, been carrying on; and, that the price is no higher than it is, is owing to this — namely, that if it were higher, more would be lost by the number of the persons *prevented* from being customers, than gained by the extra tax imposed upon those who *become* customers.

10. That thus, although in point of morality it *is*, and in point of law it ought to be *made*, the *duty* of a judge—to make the number of those to whom his service is rendered as great, and the service rendered to each as great, and as cheap, as possible, — yet so it is, that it having, as above, been made his *interest*, as well as put into his *power*, to render the number of those to whom his service is rendered as small, and the service rendered to each as small, and dear, as possible, — his interest is thus, by these arrangements, put into a state of opposition to such his moral duty: — opposition, as complete as possible.

11. That, in respect of *expense*, such is the effect of this sinister interest, that, where money or money's worth is the subject of dispute, — in the common-law courts, the least amount of the expense is, on each side, under

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the most favourable circumstances, upwards of £30; while, in cases to a large extent, it amounts to hundreds of pounds, and in the equity courts to much more: and, by appeal from court to court, one above another, under different names, — it may be, and is, raised to thousands of pounds: in the equity courts to little if anything short of tens of thousands of pounds: and this in cases in which, under the only mode of procedure really conducive to, or aiming at, justice (of which mode presently) the suit would be heard and determined, without any expense in the shape of *money*, and at an inconsiderable expense in the shape of *time*.

12. That, in cases of *bankruptcy* and *insolvency*, matters are so ordered, that, — in a great, not to say the greater, part of the individual instances, — the persons among whom the greater part, not unfrequently the whole, of the effects are distributed, are — not the creditors, but the lawyers: — the lawyers of both classes: and, as if to thicken the confusion and increase the plunderage, — *insolvency* and *bankruptcy*, in themselves the same thing, are dealt with, by two different sorts of judicatories, — examining into the facts in two different sorts of ways, upon two different sorts of principles: every insolvent having moreover given to him the means of making himself a bankrupt.

13. That, in the courts called equity courts, matters are so ordered, that, when a fortune is left (for example to a female) by a last will, so it is that, in cases to a large extent, she cannot receive it, till it has passed through an equity court; and the consequence is that, if the fortune — say £10,000 — has fallen to her at a period of early infancy, and, upon the strength of it, she has made and received promise of marriage, — upon coming of age, when she should receive it, if at the end of eight years from the death of the testator, she has received so much as a penny for her subsistence, it is a favourable case for her: and, by an opponent, if he chooses to be at the expense, may this delay (as witness a trustworthy writer*), be "*doubled* or *trebled*:" the proceeds being in the meantime swallowed up by the judges and their confederates.

14. That, by intervals of *inaction* between one part and another of the same suit — intervals of from eighteen to one hundred and twenty days between term and term, and of six months or twelve months between assizes and assizes, — matters are so ordered, that, on the occasion of a penal suit, which, by proceeding as before a justice of the peace, would have been heard and determined in a few minutes, — the accused, guilty or innocent, is confined in a prison for six months or twelve months, there to linger, before the definitive examination called the *trial* is performed. Thus is produced the so-much-lamented *contamination*: a disease not least deplored by those to whose profit, and those by whose indifference, it is suffered to continue. All this while, if for a single moment injustice sleeps, why should justice? Even in sabbath time, if the God of justice forbids not the drawing of an ox or an ass, at that time, out of a pit, — with what reason can he be supposed to forbid the drawing an innocent man, woman, or child, out of a prison? or to forbid, for a moment, any operation necessary or conducive to the prevention, suppression, or punishment of crimes, or to satisfaction for the suffering?

15. That, in an equity court, an answer, — which, by proceeding as by a justice of the peace, might be brought out in the same minute as that which produced the question, — may be made to take five years or more to extract, — if he to whom it is put will distribute among the judges and other lawyers the price put upon the delay; and, in cases to a great extent, when the answer is thus obtained, all the use made of it is — the *enabling* a man to give commencement to another suit — a suit at common law: the common-law judges, — whatsoever question they allow to be put to a *witness* at the *trial*, that is to say, towards the *conclusion* of a suit, — not suffering any question to be put to a *party*, at the *commencement* of that same suit. And why? Even because, if they did, suits in large proportion would, in less than an hour, be each of them nipt in the bud; — these same individual suits, of which, in equity, the mere *commencement* may, as above, be made to last more than five years.

16. That, on pain of losing his right — whatsoever may be the value of that same right, — this is the course, which a man may be obliged to take, in order, for example, to put it to another man to acknowledge or deny his own handwriting: — this being the only course which can be taken, when no third person — who has seen him write, or in any other way is sufficiently acquainted with his handwriting, — can be discovered, and made to answer: common-law judges refusing to suffer any such question to be put, to any person who is a *party* to the suit: to insincerity thus scandalous, on the part of a suitor who is conscious of being in the wrong, affording in this way encouragement and reward.

17. That, on a proceeding before a justice of the peace, or in a small-debt court, the matter of *law*, and the matter of *fact* on which the *demand* is grounded, are brought forward at the very outset; and, in many if not most cases, the *evidence* in support of it at the same time: and so, either at that same time, or on as early a day as may be, it is, in regard to

* Cooper on the Court of Chancery, anno 1828, p. 91.

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the *defence:* And here, if, in any *one* case, this mode of proceeding is, in a greater degree than any other that can be employed, conducive — not only to the exclusion of needless expense, delay, and vexation, — but moreover to *right decision*, — we humbly entreat the Honourable House to consider, whether it can be any otherwise in any *other* case.

18. That, in the common-law courts, — both in cases called *criminal* or *penal*, and in cases between man and man, called *civil*, — so lost are judges to all sense of shame, that not only do they carry on, but openly avow — yes, and in so many words — the practice of giving "decisions" *not grounded on the merits;* that is to say, of deciding contrary to justice: for, by a judge, how is it that justice can be contravened, or injustice committed, if it be not by purposely deciding otherwise than according to the merits? And to this dissoluteness is given the denomination, and the praise, of *strictness:* and, such is the blindness produced by the arts of delusion on the public mind, — that this abomination is, by non-lawyers, commonly supposed to be, because by lawyers it is said to be, necessary, or at any rate conducive, to justice.

19. That, accordingly, it is without scruple that they give one man's whole property to another man, for no reason than that some lawyer, official or professional, or some clerk in the employ of one or other of them or of some third person, has inserted, in some word, material or immaterial, in some writing, material or immaterial, a letter which is, or is said to be, a wrong one, — or has omitted a right one.

20. That, by the same means, and on the same pretence, and without any the least symptom of regret, they give, habitually and constantly, impunity to crime in every shape: the most mischievous and atrocious not excepted.

21. That, for example, it was but the other day, that a man, — who, beyond all doubt, had cut off the head of a child, was, at the instance of a judge, and for no other reason than that a word in a written instrument had been wrong spelt, acquitted: by which same means, with the approbation of all the judges, impunity may, at any time, by any man, in the situation of a lawyer's clerk, be given to any other man, for any crime: and, under favourable circumstances, the crime may be planned, and impunity secured to it, beforehand.

22. That this practice is the more flagrantly inexcusable, — inasmuch as, while it is carried on by a common-law judge, it is not carried on by an equity judge; nor, unless by accident, and in imitation of the bad example so set by superiors, is it, by a justice of the peace, or by a small-debt court.

23. That, on any occasion, the same judge, who on this or that former occasion has framed his decision on grounds contrary to the merits, declines, if he pleases, to pursue this course, and makes a merit of so doing: that, in this way, any set of these judges may, — under the direction, as usual, and in compliance with the will, of the chief, — give the thing in question — the estate or the money — to whichever of two men he pleases; by which means, without possibility of discovery, corruption to any amount may, on the part of judges in any number, have had place.

24. That, by all judges who are commonly styled *judges* — common-law judges as well as equity judges (not to speak of others who are not so styled,) mendacity, in one shape or other, is — openly, as well as habitually — licensed, rewarded, necessitated, and practised: and, by these same judges, by such mendacity, is filthy lucre knowingly and wilfully obtained.

25. That, by habit, to such a degree is all shame for the practice of so scandalous a vice extinguished, — that when a criminal who, conscious of his being guilty, confesses himself so to be, — the judge, as a matter of course, by persuasion purposely applied, engages him to declare himself *not guilty:* as if, supposing it desirable that other proof should be made, it could not as well be made without that lie as with it.

26. That, in like manner, what frequently happens is — that when, no one entertaining the least doubt of the man's guilt, he is accordingly by the jury about to be declared *guilty*, — the judge, by persuasion purposely applied, engages them to declare him *not guilty:* and — so wretchedly, by thoughtless excess in the punishment, has the law been contrived — the law, or that which passes for such — (meaning the common law in contradistinction to the statute law) — that, in the individual instance, more evil is perhaps excluded by abatement in that same excess, than produced by the immorality and the insubordination thus exemplified.

27. That, in common law, under the name of *judges*, and in equity, under the name of *masters* in chancery, — judges have been, and habitually continue to be, in the practice of exacting fees for operations never performed: for attendances (for example) never paid: thus adding extortion to fraud: at the same time, not merely admitting but compelling the lawyers of the parties to be sharers in the same guilt, thus multiplying the expense to the suitors, for the sake of the profit to the lawyers: — and this abomination — though brought to their view by evidence which they have caused to be printed, — the commissioners, appointed for the purpose of perpetuating, on pretence of abrogating, abuses, — have, together with the above-mentioned and so many other abuses, suffered to pass with-

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out calling for its abrogation, — and without censure, or token of disapprobation.

28. That, under the system thus faithfully, howsoever imperfectly, delineated, — every man who is to a certain degree wealthy, has it completely in his power to ruin any other man who is to a certain degree less wealthy than himself: at the expense of a proprietor, — whether the property be in the possession of the one or the other, — gratification may thus be given by the wealthy man to his avarice: at the expense of any man, proprietor or non-proprietor, to his avarice, or to his groundless hatred or vengeance: the poorer the victim, the less time and money will the gratification thus afforded to the oppressor cost him: in the lawyers of all classes, and more especially in the judges, — on condition of distributing among them the requisite sums in the established proportions, — he will, on this as on other occasions, behold and find his ever-ready instruments.

29. That, accordingly, under such judges and such laws, security for whatsoever is most dear to man — property, power, reputation, personal comfort; condition in life, life itself — is an empty name: — witness, in regard to all real property, the printed declaration of an honest lawyer, whose name is so happily to be found on the list of the commissioners appointed to make report to the Honourable House on that subject. "No title" (says he in so many words,) at present, can be considered as perfectly "safe."* — and it is by the sinister interest herein holden up to view, that this, as well as the other portions of the law, have been brought to this pass.

30. That, to keep the door shut, as close as possible, against all endeavours to apply to that system of disorder and maleficence any effectual remedy, — pains are constantly taken, to induce the persuasion, that of all these disorders, the cause is to be found — not in human maleficence, but in the unchangeable nature of things: — but, in any such notion, what degree of truth there is, we leave it — after the exposure thus made, — we leave it to all men to imagine, and we humbly leave it to the Honourable House to pronounce.

31. That, should it be affirmed that this our humble representation is exaggerated, and in proof of its being so, should it be asked — how, if the provision made for the support of rights and exclusion of wrongs were no better than as above represented, society could be kept together; — should this be asked, the answer is — that it would *not* be kept together, but for three things: namely, 1*st*, The circumstance — that the man of law, though from delinquency in the shape of *fraud*, from which, in his view of it, he has little or nothing to fear, — he has more to profit than to suffer, — yet, as to crimes of *violence*, — under the impossibility of providing protection for himself without extending it to the community at large, — he feels it his interest to do more or less towards the exclusion of them; — 2*d*, The guardian influence of *public opinion*, under favour of that liberty, precarious as it is, which the press is left in possession of; — 3*d* and *last*, An expectation, — though produced by delusion in spite of experience, — that, on each occasion, will be done that which ought to be done, or something to the like effect: on which last account we cannot but acknowledge, that it were better the delusion should continue, were it not that it is not possible that the disorder should, any further than it is laid open, receive any effectual remedy.

32. Finally, in regard to the so often-mentioned *summary* system, which is of course represented by lawyers, and thence regarded by others, as having nothing but *dispatch* to recommend it; we humbly insist, and challenge them to disprove it, that, for rectitude of decision, and thence for giving execution and effect to the law in all its parts, — it is far better adapted — not only than the system styled *regular*, but moreover than any other that can be named.

33. We therefore humbly pray — that, with such extensions and other amendments as may be found requisite, — this same system of summary procedure may be universally established — a *judiciary* establishment, suited to the application of it, instituted, — and the system styled *regular* completely extirpated.

34. For further particulars of the grievance and the main cause of it, but more especially of the remedy, — we take the liberty humbly to refer the Honourable House to the forms of petition, intituled *Full-length Petition for Justice*, *Abridged Petition for Justice*, and *Petition for Codification*, — all bearing the name of JEREMY BENTHAM, who thereby has made himself throughout responsible for the correctness of the statements therein contained: and to those who cannot find time for the perusal, we leave it to imagine and say, — whether a man, by whom a life of more than fourscore years has been passed without spot, and more than sixty of them employed on works on legislation, which in every part of the civilised world are known and regarded with approbation, — would, on a subject and occasion of such importance, — in the face of that same world, lightly hazard any assertion without some substantial ground.

* Suggestions sent to the Commissioners appointed to inquire into the Laws of Real Property, by John Tyrrell, of Lincoln's Inn, Barrister: London, 1829, p. 168.

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SUPPLEMENT,

WHICH MAY BE ADDED OR NOT TO ANY ONE OF THE THREE OR ANY OTHER PROPOSED PETITION.

SECTION I.

CORRUPTION — ITS IMPUTABILITY TO ENGLISH JUDGES.

1. CORRUPTION is generally spoken of as the *ne plus ultra* of depravity in a judge. By Englishmen, the English are commonly spoken of as forming, in respect of clearness from this stain, an honourable contrast with the judges of other countries. After reference made to what is above, we entreat those whom it may concern, and the Honourable House in more especial manner, to consider — whether, either corruption, or something still worse, is not, beyond dispute, with few or no exceptions, but too justly imputable to English judges. For — if *denial* and *sale* of justice, with *profit* by the amount of the sale, be not corruption, or something still worse, what is?

2. Like other trades, — the trade, which may with propriety be termed the *trade of corruption*, may be carried on — either in the *retail* or in the *wholesale* way: in the retail way, when it is at the charge of individuals only that it is carried on; in the wholesale way, when it is at the charge of hundreds of thousands and millions that it is carried on: by *sale* of justice at the charge of tens of thousands, with benefit in the shape of pecuniary *profit*: by *denial* of justice, at the charge of millions, with benefit in the shape of *ease*.

3. By the word *corruption*, only in that which has just been styled the *retail* mode is the thing itself commonly brought to view. In this case, the conception formed of the magnitude of the evil produced, is naturally much exaggerated. Cause of the exaggeration, this: In so far as carried on in the *retail* mode, whatsoever intercourse has place on the occasion is of course carried on in secret: by the secresy, suspicion, and *that* on the most incontestable grounds, is excited; facts, though it were in small number, transpiring by accident, — especially when other persons of note are concerned in them, or affected by them — suffice to produce in the public mind the conception — that the instances in which it has place are much more numerous than in reality they are. Under governments, and in judicatories, in which means of corruption, producing profit by money or money's worth received in the direct way, have place, — the probable number of these instances is not very great. Why? Because in this case the receiver must put himself in the power of the giver: and because a proposed giver will not, without such a sum in his hands as will (he thinks) suffice to outweigh the fear of the risk in the mind of the judge, incur the risk of being delivered over to punishment by that same judge.

4. In a direct way in the shape of money, small indeed, comparatively speaking, is the probability, that, on the part of an English judge, corruption should have place. Why? Because, so far as concerns reputation, — by a judge, a bribe could not be *received* in a *direct* way without his putting himself, as above, in the power of the *bribe-giver*. But, *indirect* ways there are, in which no such danger has place: — where, for example, it is not the judge, but a connexion of the judge's, that receives the benefit in question; — and *that* from a connexion of the *party*; especially if it be in the shape — not of money, but, for example, of a lucrative office, or a lucrative bargain.

5. Note here, that on the part of a judge, as on the part of any other man, — where, in this or any other shape, *misconduct* has place, — the amount of the evil in *all* shapes taken together being given, it matters not what has been the *motive*. In the case of a judge, — besides *self-regarding* interest in respect of money or money's worth at the hands of individuals,—temptations to the operation of which his *probity* stands exposed, are — *self-regarding* interest in respect of desire of the matter of good in that and other shapes, at the hands of government, together with *sympathy*, and *antipathy* as towards individuals or classes of any sort, — on whatever account — private or public. Now then — to corruption, — (if corruption is the name to be given to misconduct otherwise than from blameless misconception) — to corruption in the *retail* mode, from all these sources, the probity of the judge stands more or less exposed, — in all countries, and in all judicatories. Why? Because, by all these efficient causes, misconduct, in any shape, may, on the part of a functionary, in that as in any other situation, be made to have place, without need of intercourse with any other individual; and this, unless circumstantial evidence be received as sufficient, without possibility of its being, for the purpose of censure, proved either in a legal tribunal, or even in the tribunal of public opinion.

6. Thus it is, that, in respect of corruption, carried on by functionaries in all situa-

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tions in the *retail* mode, England is not much otherwise than upon a footing with other countries: while, in respect of the corruption trade, carried on by judges in the *wholesale* way, as above, she is altogether unrivalled.

7. Without any the smallest fear of punishment, — without even any considerable fear, if any at all, of any such disrepute as he is capable of being influenced by, — an English judge, on a question in which the ruling one or the sub-ruling few are supposed by him to take an interest, may commit injustice to any amount in favour of that side: without danger of any *such* disrepute, for two reasons: — 1. Because, at the hands of all with whom he is in the habit of passing his time, or is in any particular way connected, — instead of disapprobation, approbation is the sentiment he will make sure of experiencing; 2. Because, in the situation of a judge, — partiality in favour of that side is so general, not to say universal, and is the result of influence notoriously so irresistible, that, on the part even of those who suffer by it, slight is the degree of disapprobation which it calls forth: a mere nothing in comparison of that which would have place, if it were by hard money, to the same value, that it was produced.

8. In the case of an alleged *libel*, for example, against a government functionary, as such, — what man is there that ever expects, that the chief-justice will fail to do his utmost to procure the conviction of the alleged libeller?—or, on the prosecution of a justice of peace, to screen him from punishment? If *indictment* be the mode, the jury will be directed accordingly; if *information*, the impunity will, as far as possible, be conferred at an earlier stage: — the *rule* will be refused: the established maxim about *motives* — (no conviction without *proof* of a corrupt motive) — being of itself equivalent to a statute law granting impunity to every abuse of power on the part of every individual placed in that same office. A justice of peace, supposing it possible that punishment be his desire, would not be indulged with it: for, by the example of *his* punishment, delinquency on the part of others — 4000 and more, acting in that same office — might be more or less checked: not to speak of official men, in other offices, whether below him, on a level with him, or even above him. In as far as in that office a man is deterred from abuse of its powers — it is by fear — not of conviction (a disaster to which he does not stand exposed) but of *prosecution;* to which, whatsoever can be done for him, he cannot but remain exposed, at the hands of any such adequately opulent individuals, in whose breast *resentment* has so far got the upper hand of *prudence.*

9. As to *incorruptibility* and *independence*, — under Matchless Constitution, every judge is, on every occasion, acted upon by that same matter of corruption, of which the fountain springs from behind the throne: he alone excepted, who for himself has nothing to wish for, nor has relation, friend, or enemy. What then, but either deceiver or deceived, can any be, by whom, in the situation of an English judge, any such quality as *independence* is said to have place?

Two laws — *made*, both of them, by these same judges who "never make any law," — two laws — either of them, much more both of them together (not to speak of the fullest assurance at the hands of legislators, of which presently,) suffice to keep banished from the mind of an English judge, all apprehension of punishment, in any shape, for anything done in the exercise of his power. One is — that which enables a public man, to whom misconduct is imputed, to bring down punishment on the head of the imputer, without exposing himself, on that occasion, to any such unpleasant accident, as that of hearing the truth of the imputation proved, out of the adversary's, or any *other* mouth: the other is, that which preserves him from the still more unpleasant accident of hearing it proved out of *his own* mouth.

Where the procedure is by *information*, true it is — that, in some instances, the court has refused to grant what is called *the rule* (namely, the rule by which it is suffered to go on,) without an *affidavit* denying the truth of the imputation. But, for preserving an *oppressed* complainant from being punished instead of the *oppressor*, what would this practice do, were it ever so sure to be adhered to? Just nothing. Whether any judge, whose pleasure it has been to receive a bribe, will have received the bribe-giver, with a third person in his hand, to bear witness of the transaction, may be left to be imagined: and, without such third person, the evidence of the bribe-giver will go for nothing; for, forasmuch as to conviction in case of perjury, two evidences are made necessary, a licence is thereby granted to every person to commit perjury, wherever no evidence, in addition to the testimony of *one* witness, has had place.

But, suppose an extraordinary case: similar or other evidence, not only in existence but obtainable, on the strength of which it is possible that conviction may take place: how stand the relative situations of the parties? Against conviction of the doubly guilty functionary, guilty of the original oppression or depredation, guilty of the perjury committed for the purpose of transferring all punishment from the injurer to the injured, the chances are several to one: while, to the oppressed or plundered accuser, or other prosecutor, punishment is applied to a certainty: punishment, that is to say, pecuniary punishment, and this to an amount not ascertainable beforehand; but frequently not less than some hundreds of pounds. True it is, that, in this case, not *punishment* but *costs* is the

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name given to it: but whether, by this change of denomination, any abatement be made in the suffering produced by the thing denominated, may be left to be imagined.

True it is again — a mode there is, in which, if a judge, or any other functionary, or any other person by whom oppression, depredation, or any other crime, has been committed, wishes to see it exposed to public view, — he is at liberty to put in for the indulgence: this is the mode by *action:* for in this case the alleged libeller — the defendant — is left at liberty to prove the truth of the imputation; which, if he does, the criminal, whose guilt has thus been proved, obtains no *damages*, and perhaps pays *costs*. But, somehow or other, a desire of this sort is not very commonly entertained.

Not that in all cases the guilt of the prosecutor is thus demonstrated by the mode of prosecution chosen by him. For where, as in the cases of *indictment* and *information*, the suit is of that sort in which punishment is applied under the name of *punishment*, to the *author* of the injury, — and no *compensation* given directly and avowedly to the *sufferer* by the injury, — in this case, the testimony of the sufferer is admitted; and not only so, but as capable of being taken for sufficient, without corroboration from any extraneous evidence. But, in the case in question, extraneous evidence, and *that* adequate, never can be wanting. It is given by every man, by whom a copy of the alleged libel has been purchased.

Accordingly, if any such criminal act is imputed to a man: to any man, and in particular to a judge, — he will proceed by one sort of suit or another, according as he is guilty or not guilty. If not guilty, he proceeds by action: if guilty, he proceeds by indictment or information; by information — either in the ordinary way, or by information in the *ex officio* way: in the *ex officio* way, that is to say, by the mere act, if obtainable, of the attorney-general, without application for leave, made in public, to the court. This being the case, — if it be in any one of these three last-mentioned ways that he proceeds, — to what a degree he exposes his character to suspicion, not to say gives it up, is sufficiently obvious.

SECTION II.

OTHER SOURCES OF OPPOSITION TO LAW REFORM.

1. If it be of use, that, in the situation of judge, the opposition of interest to duty under the existing system should be held up to view, — not less so can it be in the case of those, by whom the conduct of all judges is determinable.

2. On this occasion may be seen two conflicting interests, by which the minds of legislators are everywhere operated upon: legislators, and the ruling few in general: to which class belong of course the judges; whose case comes, on this account, a second time under consideration; of these same conflicting interests, the one acting in accordance with the official duty, the other in opposition to it.

3. First, as to duty in respect of the main end of justice: namely, maximization of the execution and *effect* given to the several existing laws, by whomsoever made. To the legislator for the time being, if to anybody, belongs assuredly this duty, in the character of a moral duty: necessary to the fulfilment of which (as there has so often been occasion to observe) is prevention, not only of *misdecision*, but of *non-decision*, where, and in such sort as, *decision* is necessary to the production of that same *effect:* so likewise in respect of the *collateral* ends of justice; namely, minimization of expense, delay, and vexation.

4. Thus much for *duty*. But, as to *interest*, unfortunately, in the breast of the legislator, as well as in that of the judge as such, — against that interest which is in accordance with duty, fight other interests which stand in opposition to it. Interests in accordance with duty, those which belong to him, in common with all other members of the community; interests in discordance with and in opposition to duty, all those which, being peculiar to the few, cannot be promoted but at the expense of those of the other members of that same community; in a word, of the *subject-many*.

5. So much for conflicting *interests:* now for *law*. In the aggregate body of the laws, some there will always be, by which the promotion of the interests of both sections — that of the subject-many, and that of the ruling few — will have been endeavoured at, and in a greater or less degree compassed: others again there will be, by which the interests of the ruling few will be promoted, or be endeavoured to be promoted, at the expense of those of the subject-many: others again by which the interests of the subject-many will be promoted, or be endeavoured to be promoted, at the expense of the particular interests, or supposed interests, of the ruling few.

6. So much for legislators at large. Enter now in conjunction such of them as are lawyers, and lawyers at large, official and professional, both in one, and professional at large; looked up to, all of them, by legislators as their advisers. These being the only persons, who can so much as profess to have any general acquaintance with the law as it is, — thence it but too naturally comes to pass — that, as often as any proposal for the

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melioration of the system is brought forward, — the opinion by *them* declared is, as of course referred to, as that on which the determination respecting acceptance or rejection shall be grounded. But, it being in the highest degree their interest that it shall be in a state as opposite to the interest of the people, in respect of the above-mentioned ends of justice, as possible, — and, whatever it be, as little known as possible, — of course, so it is, that supposing any such change proposed, as affords a promise of rendering it conformable to the ends of justice, whatever knowledge each man possesses is applied — not to the promotion, but to the prevention of it; prevention of it — by any means and in any way; in an open and direct way, or in a disguised and indirect way; in particular, by the promotion of such narrow improvements, apparent or even real, so they be — either by unadaptability, or by their narrowness and the consequent length of time requisite for their establishment, — obstructive of all adequate as well as beneficial change.

7. Accordingly, when a plan has been brought forward, having for its object the establishment of an all-comprehensive, uniform, and self-consistent rule of action,—conducive, in endeavour at least, in the highest degree possible, to the happiness of the whole community, taken together,—and this at the earliest *time* possible,—little less than universal have been the anxiety and the conjunct endeavour to frustrate its design. For this purpose, silence, being at once the most commodious, and the most efficacious, has been the means generally resorted to: the most efficacious; forasmuch as by declared opposition, attention would be drawn to the subject, and to the validity of the arguments *in favour* of the plan; and the futility of the ablest and strongest arguments capable of being brought *against* it, would be the more extensively perceived.

8. Hence it is — that, under the existing system — while, on the part of judges, not only acts of wilful omission to give execution and effect to the law have place, but acts are committed, by which the authority of the will declared by the legislature is avowedly overruled, — so perfectly undisturbed is the tranquillity manifested by legislators. In cases, in which no particular detriment to the particular interests of the ruling few is perceptible, as plenary as can be wished is the indulgence: in these cases, these hired servants of the law are left to obey it or break it, as is most agreeable to them.

9. Parliament enacts one thing: equity rules, or acts, the opposite thing. The Earl of Mansfield, ablest as well as most zealous absolutist that, since the aristocratical revolution, ever sat upon an English bench, — had for use a word admirably adapted to this purpose. According to him, statutes, singly or in any number, were, on each occasion, to be taken in hand and *moulded*.

10. Thus, on a *common-law* bench: and, in equity, the Earl of Eldon, though without the use of the word, was not backward in declaredly following the example.* As for apprehension, no very strong sensation of this sort could reasonably be entertained, by a Lord Eldon, sitting in his court of equity, of the same Lord Eldon sitting in judgment on his own conduct in his House of Lords. Now, for above these four years, has indication of this mode of ruling, by vigour, over the law, been before the eyes of the public. There it is; and who cares? Just as much the Tories out of place as the Tories in place.

11. Connected with this preminent and undeniable interest, may be seen another particular and sinister interest, which, though so much less extensively shared, will, by its latentcy, and the consequent appearance of disinterestedness, naturally operate, in the sinister direction, with still greater force. This is the interest of the *ex-lawyer*. Interest affected, and feared for, by the lawyer in office or practice, pecuniary interest: interest affected, and feared for, by the ex-lawyer, interest created by regard for reputation, reputation of appropriate wisdom. Well-grounded altogether is this fear, it must be confessed: for, proportioned to the acknowledged beneficialness and extent of any such beneficial change, will be sure to be the real folly which has all along been covered by the veil of apparent and boasted wisdom. Occupied — first in the study of this system, then in the acting under it, and all along in the magnification of it, the labour of a long life, — and now, after all, and all at once, a compound of mischievousness and absurdity is found to be the character of it! What a shock to vanity and pride!

12. Not merely in proportion to the change effected, but as soon as the change is determined upon, will the sad sensation be produced. Ill-gotten wealth and power excepted, all that the great man has been accustomed to be valued upon, or to value himself upon, vanished!

13. In the train of these sinister *interests*, come *interest-begotten prejudice*, and *authority-begotten prejudice*. But of these sources of opposition to whatsoever is at once useful and new, — in one place or another, so continually recurring, has been the need, — and, with the need, the act,— of making mention, — that every further mention of them *here* may well be spared.

14. Such being the exposure made of the opposing causes: now for its practical uses. Uses of it may be seen two: — One is, showing, that, taking the existing system all toge-

* Indications respecting Lord Eldon.

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ther, no proof of its fitness to exist is declarable from its having thus long been in existence.

15. The other use is—showing, that against no one distinguishable article of the here-proposed system, or of any proposed system, — to any declared opinion of any individual belonging to any one of those same classes, so far as it seeks to operate in favour of the existing system, should any weight be attributed—any regard be paid. On the contrary, it should be looked upon as an argument in *favour* of that system to which the opposition is made: in favour of it, and for this reason. With this subject, as with every other, the better acquainted a man is, and the greater his appropriate ability, the better able will he be to bring forward whatsoever relevant arguments in support of his declared opinions the nature of the case affords: and the stronger the reliance placed by him on the effect looked for from his mere opinion, the stronger the evidence of the consciousness of the depravity of the system, and the weakness of all arguments producible in favour of it.

16. To conclude. In this state of things, if, from the pressure of the enormous and perennial load of misery, from which relief is hereby endeavoured to be obtained, any such relief is to be expected, — it must be at the hands of one or other of three distinguishable descriptions of men in the situation of legislators: one, in which a sense of moral duty has place, and that same sense strong enough to constitute an effective cause of action: another, that to which it appears that its own particular interest is so bound up with the general weal, as to have more to gain than to suffer, from the substitution of the good system to the bad one: the third and last, that in which a salutary fear, in sufficient strength, has place: the fear, lest, wearied by the oppression, and enlightened at length by the information received, as to the causes and the authors of it, — the subject-many should, in sufficient number, concur in doing for themselves what ought to have been done for them, and in so doing cease to exhibit that compliance, by, and in proportion to which, all power is constituted.

Still, before this Supplement is concluded, a few more articles, particularly the fifth and last of them, may, it is hoped, be found not altogether without their use. As to the third and fourth, exhibiting impunity given to murder, and right trampled upon — both without the shadow of a reason — the practice is of such continual occurrence, that these instances of it would not have been inserted, but that, at the moment of sending off the matter to the press, the memorandums made of them happened to present themselves to view.

1. *Applying to Device* III.—*Written Instruments were worse than useless, necessitated.*

From the *Examiner* for 30th November 1828:—"An action has been brought against the 'select' (of St. Giles's and St. George's, Bloomsbury) to try their title; £200 were therefore abstracted from the funds raised for the support of the poor, and thus stimulated, his (the solicitor's) industry was extraordinary, for he put in fifteen special pleas covering the surface of 175 folios! On Tuesday-week, however, the Court of King's Bench *reduced* the number more than one half,* and thus the select have incurred personally the needless and vexatious expense to which they resorted for obvious purposes."

2. *Applying to Device* V. — *Oaths, for the establishment of the Mendacity System, necessitated.*

From the *Windsor Express*, August 2, 1828: — "At the Manchester quarter-sessions, a woman was arraigned for stealing a shawl from a child in the street. A little boy was brought forward to give evidence of the fact; instead of being suffered to do this, however, the chairman examined the child as to certain theological doctrines. After the child had said he knew it was a bad thing to tell lies, the chairman said, do you know what becomes of those who tell lies? 'No, I don't.' Chairman: 'Do you ever say your prayers?' 'Yes, I said my prayers once.' Chairman: 'And what prayer was it you said?' 'I said Amen.' Upon this the chairman refused to receive his evidence, and the woman was set free."

3. *Applying to Device* XI. — *Decisions on grounds avowedly foreign to the Merits — Exemplification of the Crime-licensing System.*

From the *Windsor Express* for July 19, 1828: — "At the present Berkshire assizes, a woman was charged with murdering her child by wilfully suffocating it. Before any evidence, counsel submitted that the woman must be acquitted of this murder, *because at the coroner's inquest, the name of one of the jurors was stated to be Thomas WinterBorne, instead of Thomas Winter Burn.*

"Mr. Baron Vaughan — 'I cannot hold that Borne and Burn are the same name, and *I am clearly of opinion* that this objection

* In the reduction thus made, may be seen a sample of the sort of law reform, which, were the matter left to them, would be established by Judge and Co. As to the *reduction* made in the gibberish, — what was the reduction made by it in the expense, or what the expense of the *application* made for the reduction? and therein, of the *saving* to the parties from these reductions, what was the *net* amount?

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puts an end to the case.' The prisoner must be discharged."

"Another case occurred on Tuesday in the King's Bench. Fisher *v.* Clement. It came out during the trial that the defendant, who had been found guilty in the Common Pleas, was allowed a *venire de novo* by the King's Bench, *because* in one of the counts in the declaration, the words 'of and concerning' had been omitted."

4. *Applying to Device* XIV. — *Groundless Arrest for Debt.*

From the *Examiner* of 11th January 1829, page 28:—"The *rules* embrace a suburb, immediately adjoining the King's-Bench prison, of a circumference of about from two to three miles, and containing about six miles of open roads and streets. This advantage to debtors is somewhat similar to that accorded to prisoners of war on their *parole d'honneur*, with the exception, that, in this instance, the law fixing the marshal for the debt of his prisoner whenever the latter shall be found without the limits of 'the rules,' that officer very properly takes care to receive sufficient security. It is by the privilege of granting 'the rules' to prisoners, that the marshal realises the greater portion of his income, which is said to amount in the gross, to from £10,000 to £20,000. The charge for the rules is in proportion to the amount of the debt, the rate demanded being £8 for the first, and £5 for every other £100 of the detainers lodged against a prisoner. The bonds are also prepared in the marshal's office, and leave their profit in his pocket. — *King's-Bench Gazette.*"

The patronage of this office, whatever may be the emolument of it, being in the hands of the chief-justice of the King's Bench, as the patronage of a living is in the hands of the proprietor of the advowson; and it being thus his interest, that oppression and depredation, at the charge of men thus under affliction, should, in proportion as any increase in the amount of the emolument is the result, be screwed up to the highest pitch possible, — these things considered, what regard can be due to the *ipse-dixit* authority of anything which, by a man in *such* a situation, is ever said in favour of the existing system, may be left to be imagined.

5. *Applying to Device* XIII. — *Jurisdiction split and spliced: Abridged Petition, article* 262.

Not by any means a matter of indifference is, in this case, the appellation employed. To many a functionary, by whom, as such, the power of a judge is exercised, the appellation of *judge* is not wont to be applied. Instance, a *justice of the peace.* Mind now the advantage taken of this circumstance, for the never neglected purpose of excluding, from the practice of judicature, the light of publicity, and thence the only check, to which in various situations — and more especially in that of a judge who is styled *judge*, — power, otherwise completely arbitrary, stands exposed. Speaking of the judicatory of the sort of judge styled a *justice of the peace*, in the cases in which he acts, or may act, without any other with him, — so shameless have been judges of the sort styled *judges* — to such a degree shameless, as to declare — that it is *not* a *court of justice*: and that this being so, he who presides is not under the obligation of carrying on the business otherwise than *in secret*. Is *not* a court of justice? What then *is* it? A court of injustice? This it must be, if anything; unless between the one and the other a medium can be found.

Other instances have been afforded by the sort of judge styled a *coroner*, who presides in the judicatory styled *the coroner's inquest*. To what purpose, unless it be that of sharing in the privilege of giving impunity to past, and thereby encouragement to future murder, possessed and exercised, as above, by judges styled judges?

Behold here an example, of the way in which the judge-made law styled *common law* is made. King, Lords, and Commons, altogether, would they dare do any such thing?

6. *Applying to almost the whole constellation of Devices.*

Under the Mosaic code, justice was administered at the city *gates*. Why at the *gates*? Even because *there* was the greatest affluence of passengers: affluence — not of paid, but of gratuitous observers, and thereby *inspectors*, on the principle above submitted to the Honourable House. Of factitious expense or delay, in no shape, under that system, is any trace visible. Exclusion of parties from judges' presence — unintelligible-language — useless written instruments — subornation and practice of lying — cessation of judge's service for six months and twelve months together — blind fixation of times for judicial operations — mechanical, substituted (as hath been seen) to mental judicature — useless transference in bandying: add — transference of suits from judicatory to judicatory — decision on grounds avowedly foreign to the merits — jurisdiction, when it should be entire, split and spliced, — of any one of all these abominations, not a vestige visible.

Whence, now, this difference? Whence, but that the God of Moses was the God of Justice; the God of Judge and Co. the Demon of Chicane.

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7. October the 3d, 1829: one more last word: *facit indignatio verbum* — indignation, called forth by the occurrence of the moment,

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has produced it. But, the *very* last word this must be: for, if the like cause were constantly productive of this same effect, never would this publication find its close.

8. Two guineas for one minute occupied in bearing a part in the useless and mischievous ceremony—the swearing ceremony! Fees to this amount extorted by a Master *(ordinary)* in Chancery, for a business, which, by a solicitor arrayed in the title of MASTER EXTRAORDINARY, is done for half-a-crown! Five guineas to the same extortioner for the bare *receiving* of a paper styled *an answer:* besides travelling expenses for a useless journey of from six to twenty miles.

9. Plunderage, to these amounts, extorted, or endeavoured to be extorted, from *paupers*, whilst in *prison!*—in prison,—during life. And for what? For no less a crime (it is true) than that of *rebellion*. But, the proof of it is—what? No other than the inability to pay costs: the costs, all factitious; tares, sown by the demon of chicane; crops, for the sowing and gathering in of which, the courts of iniquity, so miscalled *courts of equity*, are kept on foot.

10. Of this same eventually intended life imprisonment, in one case seventeen years already passed. Of this case, with six other similar ones, the disclosure produced by a visit to the Fleet prison; namely, the visit, forced from the foremost of the *anti-codificationists*, and anti-reformists in all shapes, in Honourable House—the new solicitor-general—imported into it, with his minute scraps of reforms and sham reforms, for the special purpose of keeping the door shut against all adequate ones.

11. Behold the letter written by him—written to one of the victims of the oppression: giving him the assurance, that it would be "his own fault" if he continued to be thus oppressed. Behold in this letter a genuine English lawyer's sermon, on the text—"I was in prison, and ye visited me."

12. "Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered," Luke xi. 52. Read this, ye anti-codificationists!

13. "Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye touch not the burdens with one of your fingers." Read this, ye fee-fed delayers, deniers, and sellers, of what ye call *justice!*

14. The power, given to judges by Lord Eldon and Mr. Peel—the power of imposing, on the indigent and already afflicted, taxes without stint, putting the produce into their own pockets—this power has already been over and over again held up to abhorrence; and, on each occasion that seems favourable, will be so again, as long as any blood remains in the hand which gives motion to this pen. Of the purpose and use of the creation and preservation of this *power*, this case presents an exemplification. And this is called *government!*—and this is called *justice!*

15. *Rebellion*, forsooth? "*Durum est*," says a maxim of their own—Oh yes!—*durum* enough—durum est torquere leges, ad hoc, "ut torqueant homines."

> To torture men, the tyrant words distorts:
> These are the fee-fed lawyer's cruel sports.

16. Of these sham convictions of *rebellion*,—if persevered in, with the practical consequences deduced from them,—what more apposite requital than a real and successful one?*

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* Seen, for the history of this business, have been the documents following:—

1. Account of the Solicitor-General's visits to the Fleet prison on the 11th and 12th: headed CHANCERY REFORMS.—*Morning Chronicle*, 15*th September* 1829. "From the British Traveller."

2. Account of these same visits: one of seven cases mentioned in the above, the last four omitted.—*Morning Herald*, 15*th September;* headed CHANCERY REFORMS, Visits, &c. "From the British Traveller."

3. Article, headed CHANCERY REFORMS, CONTEMPTS OF COURT.—*Morning Herald, September* 17*th.*

4. Masters in Chancery—their charges. In a letter signed, A Solicitor. Article headed CONTEMPTS OF CHANCERY.—*Morning Herald, October* 2*d.*

5. Article headed "CHANCERY PRACTICE. The Solicitor-General and the rebel Pickering," containing a bill of costs.—*Morning Chronicle, October* 3*d.*

Not seen, the British Traveller—the original source of the information on this subject.

☞ A beneficial exemplification of public spirit would be a republication of the above matter in a cheap form.

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PETITION FOR CODIFICATION.

THE PETITION OF THE UNDERSIGNED,

Humbly Showeth, — That, in so far as our respective consciences will allow, we entertain the sincerest disposition to conform ourselves in all things to the good pleasure of those who are set in authority over us.

That when, by any of us, a wish is expressed to know what that pleasure is, he is bid to look to *the law of the land.*

That, when a man asks what that same law is, he learns that there are two parts of it: that the one is called *statute law*, and the other *common law*, and that there are books in which these same two parts are to be found.

That, when a man asks in what book the *statute law* is to be found, he learns that, so far from being contained in any *one* book, howsoever large, it fills books composing a heap greater than he would be able to lift.

That, if he thereupon asks, in which of all these books he could, upon occasion, lay his hands, and find those parts in which he himself is concerned, without being bewildered with those in which he has no concern, — what he learns is — that the whole matter is so completely mixed up together, that for him to pick out the collection of those same parts from the rest, is utterly impossible.

That, if he asks in what book the *common law* is to be found, he learns that the collection of the books in which, on each occasion, search is to be made for it, are so vast, that the house he lives in would scarcely be sufficient to contain it.

That, if he asks who it is that the statute law is *made by*, he is told, without difficulty, that it is by King, Lords, and Commons, in Parliament assembled.

That if, in continuation, we proceed, any of us, to ask who it is that the common law has been made by, we learn, to our inexpressible surprise, that it has been made by nobody; that it is not made by King, Lords, and Commons, nor by anybody else: that the words of it are not to be found anywhere: that, in short, it has no existence; it is a mere *fiction;* and that to speak of it as having any existence, is what no man can do, without giving currency to an imposture.

When, upon observing that, by every *judge*, it is spoken of as a reality, and that he professes to be acting under it, we ask whether it is not *he* that makes it? we are told, that this is what no judge ever does, and that, by any of the learned judges, a question what part of the law is of his making, would be received with indignation, and resented as a calumny.

That when, seeing men put to death, and otherwise grievously punished by order of judges, a man asks by what authority this is done, he learns that it is by the authority of statute law or common law, as it may happen: and if he thereupon asks whether, when it is upon the authority of the common law that the judge does this, it is not by this same judge that this same common law is made, he still receives the same assurance — that no judge ever makes law, and that a question what part of the law is of his making, would be received with indignation, and resented as a calumny: while the truth is — that, on each occasion, the rule to which a judge gives the force of law, is one which, on this very occasion, he makes out of his own head: and this — not till the act for which the man is thus dealt with has been done: while, by these same judges, if the same thing were done by the acknowledged legislature, it would be spoken of as an act of flagrant injustice, designated and reprobated, in their language, by the name of an *ex post facto* law.

All this while, we are told that we have *rights* given to us, and we are bid to be grateful for those rights: we are told that we have *duties* prescribed to us, and we are bid to be punctual in the fulfilment of all those duties; and so (we are told) we must be, if we would save ourselves from being visited with condign punishment. Hearing this, we would *really* be grateful for these same *rights*, if we knew *what* they were, and were able to avail ourselves of them: but, to avail ourselves of rights, of which we have no knowledge, being in the nature of things impossible, we are utterly unable to learn — for what, as well as to whom, to pay the so-called-for tribute of our gratitude.

As to these same *duties*, we would endeavour at least to be punctual in the fulfilment of them, if we knew but what they were; but, to be punctual in the fulfilment of duties, the knowledge of which is kept concealed from us, is equally impossible. That which is but too possible, and too frequently experienced by us, is the being thus punished for not doing that which it has thus been rendered impossible for us to do.

Thus, while the rights we are bid to be grateful for are mere illusions, the punishments we are made to undergo are sad realities.

Finally, thus it is that we, who, in so far as such oppression admits of our being so, are

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his Majesty's dutiful and loyal subjects, are dealt with as were the children of Israel under their Egyptian taskmasters.

We hear of tyrants, and those cruel ones: but, whatever we may have felt, we have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of.

We have heard much of cruelties practised by *slaveholders* upon those who are called their *slaves*. But, so far as regards the mode of treatment we thus experience,—whatever be the cruelties practised upon *them*, never have we heard this to be of the number of those cruelties. The negro, so long as he does what he is commanded to do, and abstains from doing that which he is forbidden to do—the negro—slave as he is, is safe. In this respect, his condition is an object of envy to us, and we pray that it may be ours.

We have heard not a little of the pains taken by the Honourable House, in the endeavour to put an end to those same cruelties. We cannot refuse to any such endeavour the humble tribute of our applause. But we hope we are not altogether unreasonable in our wish to receive, from the hands of the Honourable House, the benefit of the like endeavours.

That which, for this purpose, we have need of (need we say it?) is a body of law, from the respective parts of which we may, each of us, by reading them or hearing them read, learn, and on each occasion know, what are his *rights*, and what his *duties*.

The framing of any such body of law cannot indeed but be a work of time. This is what we are fully sensible of. But the sooner it is begun, the sooner will it have been completed: and the longer the commencement of it is deferred, the more difficult will be the completion of it. Completed, indeed, it cannot be; and of this too we are fully sensible, otherwise than by the King and the Lords, in conjunction with your Honourable House. But, to the taking in hand this most important of all works, there is *a preparatory operation*, which, we have been assured, and verily believe, is within not only the *power*, but the *practice* of the House—of the House acting in its single capacity, and by its sole authority. This is what we hereby pray for, and it is as follows:—

1. That the House, in and by its votes, may be pleased to give invitation to all persons so disposed, to send in, each of them, a *plan* of an all-comprehensive code, followed by the text thereof; this text, either the whole of it at the same time, or in successive portions, as he may find most convenient.

2. That, for indemnifying each such contributor from the *expense of printing*, the House may be pleased to give authority to him to send in such his work, in manuscript, to any person authorised by the House to print its proceedings: that is to say, for the purpose, and, subject to the limitation hereinafter mentioned, under the assurance that the same will be printed, along with the other proceedings of the House, in like manner as acts of parliament are at present.

3. As to the persons of such contributors, we humbly insist, that, from the liberty of sending in draughts for this purpose, no person should stand excluded. No; not any person whatsoever. For suppose, for example, a foreigner to send in a draught better adapted to the purpose than any draught sent in by any of his Majesty's subjects,—we see not why his being so should debar us from the benefit of it: and assuredly we see not any reason whatever for any such apprehension, as that, by the Honourable House, the circumstance of the draughtsman's being a foreigner should ever cause a less well-adapted draught to be employed and sanctioned, in preference to a better adapted one.

4. As to the expense that might be eventually attendant on the printing of such draughts, it is no more than we are perfectly aware of. But there are two arrangements, which, taken together, we cannot but rely on as sufficient to reduce within a moderate compass the amount of that expense.

5. One is, that it be an instruction to every contributor, that no such contributor shall receive the benefit of the accommodation thus afforded, unless, to each article or set of articles in his proposed code, the *reason*, or *set* of *reasons*, by which it was suggested, on which it is grounded, and to which it trusts for its explanation and reception, be appended.

6. The other is—that, by the Honourable House, power be reserved to itself, by the hands of any person or persons for that purpose, thereto appointed,—to put a stop at any time, to the printing of any such draught: after which, should the impression be continued, it will be at the contributor's own expense. But that, to assist him in the faculty of thus making a virtual appeal to public opinion, such part of his draught as shall have been already printed, shall be delivered to him, to be disposed of as he shall think fit.

As to the obligation of attaching the abovementioned *rationale*, we trust to it as a powerful *incentive*, to the framing and sending in well-grounded draughts, as well as a powerful instrument for keeping the service unincumbered with ill-grounded and ungrounded ones. To frame a proposed code of laws, with apt reasons all along for its support, is, in our eyes, the most arduous, as well as the most useful, of all purely human tasks that the human faculties can employ themselves upon: and, proportioned to this our persua-

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sion, is of course our desire — that, without any exception, the door should remain open to all contributors, as above: while, on the other hand, to frame proposed laws, destitute of such support, is what no hand that can give motion to a pen would feel to be out of its power: it is what not we alone, but our mothers and our grandmothers likewise, would be capable of doing, and might peradventure be disposed to do: and it is (we have sometimes heard) no altogether uncommon sight, to see hands, little better qualified, thus occupied.

To each such contribution should be attached a *name* and address: this, not for the purpose of determining the *authorship* (for that might be left to each one's desire,) but for the purpose of *responsibility*, in the case of any inapplicable matter, sent in for the purpose of derision, by persons engaged by sinister interest in the endeavour to render the measure abortive.

As to *remuneration*, we humbly insist that none, — in any shape other than that of the eventual honour of distinction and public approbation, with the benefits which in so many shapes, in amounts proportioned to the degrees of it, cannot but be among the fruits of such approbation, — ought to be allotted to any work so sent in: so far from promoting, any such remuneration could not but operate in counteraction to its proposed object, as above. It would operate as a notice of *exclusion*, to every man who could not regard himself as situated within the sphere of personal favour; and, the higher the reward, the greater would be the number of those who would regard themselves as thus excluded.

We beg to be believed, giving as we do our assurance to the Honourable House, that it is not to any such purpose as that of seeing so much as proposed, much less effected, any change in the hands, in which the supreme power of government is lodged, that this our humble petition is directed; and accordingly what we not only consent to, but wish and desire is, that, out of the field of the proposed otherwise all-comprehensive code, all those parts which regard the prerogative of the King, the privileges of the several Members of the two Houses of Parliament, collectively and severally possessed, and the consideration of the hands in which the elective function is placed, be excepted; unless it be — that, for the sake of symmetry and completeness, expression be, on those several subjects, given to the law *as it is*, or *is conceived to be*: it being understood that, by the expression so given to matter of this description, the draughtsman is not understood to express either approbation or disapprobation, in relation to any part of it.

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LORD BROUGHAM DISPLAYED:

INCLUDING

I. BOA CONSTRICTOR, *alias* HELLUO CURIARUM;

II. OBSERVATIONS ON THE BANKRUPTCY COURT BILL, NOW RIPENED INTO AN ACT;

III. EXTRACTS FROM PROPOSED CONSTITUTIONAL CODE.

BY JEREMY BENTHAM.

FIRST PUBLISHED IN 1832.

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BOA CONSTRICTOR, *alias* HELLUO CURIARUM.

SPEECH of Lord Chancellor Brougham, *as printed in the Morning Chronicle of Friday, September 2d,* 1831, *in the Article headed Court of Chancery, on announcing his "resolved on" absorption of the Courts of the Vice-Chancellor and the Master of the Rolls into that of the Lord High Chancellor.*

The Lord Chancellor sat this morning to deliver the few judgments which remained to be pronounced on matters which had been previously argued before him; and having disposed of them,

His Lordship addressed the Bar to the following effect:—"It is a great satisfaction to me, in taking my leave of the Bar and of the suitors, to know that I have been able to dispose of all the arrears of the business of this Court, and that there are no appeals unheard, no petitions unanswered, and no causes now unheard, except those which are not ready, and which have been put upon the files of the Court subsequent to last June. It is a very great relief to the Court—it will be a very great relief to the Bar—it will be a very great relief to professional men, as I know it will be a very great relief to the suitors—for them to feel that they shall have their business henceforward going regularly on, not incumbered by arrears, and not having their minds oppressed with the harassing prospect of never getting through their business. In the course of next term, the benefit of all this will be felt, and it will be found that the time has been well bestowed which we have been lately occupying, though it may have pressed hard upon the Bar, upon suitors, and upon other professional men, who have been anxiously attending the Court. It has pressed hard also on *the Court*, but *I* have been willing to bear that pressure, knowing well that the public will feel the full benefit next term. It was said to a great man, the most illustrious of all my predecessors, that he allowed the pressure of business upon him to be more than he could bear; to which he replied, 'The duties of life are more than life:' memorable words, to be had in everlasting remembrance by all men who serve their country! The kindness and attention I have received from the Bar are such as to require my most grateful acknowledgments, which I now respectfully offer. I beg leave to add, that *I have now the most sanguine hopes of being able to relieve his Honour the Vice-Chancellor from hearing the greater part of causes, such as those which have been heard by him since the year* 1813. The appeals which I have disposed of within these few months have been 120: of those, 108 have been fully argued and decided—indeed all of them, except *Miller v. Travers, which stands for the opinion of the two Judges who assisted me in it.* The time taken in the arguments upon the appeals (the average time being several hours to each) shows that every one of them were cases of importance, and that there has been no short cause heard by way of appeal before me. This has been the cause of the length of time that has been occupied in getting through the long and heavy arrear—the arrear of years. When I look into this statement, I find also, that in the proportion of six to four, or of three to two, are the number of appeals from his Honour the Vice-Chancellor to those coming from his Honour the Master of the Rolls—arising, no doubt, from the great number of causes decided in the Vice-Chancellor's court, *and from that circumstance only.* It is clear, therefore, that at least three months of the time of this Court would have been entirely saved, if *that arrangement* could have been made, *which* (foreseeing this) *I propounded, but unsuccessfully propounded, when I came into the Court.* I thought that every cause which was either of some importance in point of value, or difficulty in point of law or of fact, that came before their Honours the Master of the Rolls and the Vice-Chancellor, almost inevitably found its way here by appeal—and generally, certainly in the majority of cases, only led to great expense, great delay, and great inconvenience, whether there should ultimately be an affirmance or reversal. I proposed, therefore, that all *causes of difficulty and importance in point of value, or from the law as applying*

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to them, should at once be transferred here, and heard by me, as thereby the inevitable appeal would be averted. The event has justified my prospective conjecture, and leads me now to form *the plan which I shall certainly adopt — namely, that of transferring at once the bulk of that business into this Court.* Such a result was long ago foreseen by eminent men. *It was the opinion of Sir Samuel Romilly* — a most venerable name — it was the opinion of Sir John Leach, then a member of parliament, and of many others, *that the erection of a Court for his Honour the Vice-Chancellor would have,* among other things, *the effect of increasing litigation;* and that a mass of business, which did not then exist in Chancery, would be added to the business of the Court. How far that conjecture has been proved by experience, must be visible to all men; since 64 out of the 108 contested appeals were from his Honour the Vice-Chancellor, and have taken up three months constant, laborious, and expensive attendance to all the parties concerned. If, however, that arrangement can be made, which I look forward confidently to accomplishing, I shall then deem it to be my duty to *give to the suitor the full benefit, in all difficult and important cases, of having three judges instead of one to hear their causes. If this cannot be done by the law as it now stands, I trust the Legislature will assist me in effecting it.* My opinion is, that it can be done without altering or adding to the law as it now stands. I have the power at present to *ask for the attendance of any or all the judges in Westminster Hall,* and I know not why I should not have the power of asking to be assisted by the presence of the Master of the Rolls and Vice-Chancellor, when necessity requires. Other Chancellors have had the Master of the Rolls to sit for them when absent; I have never required that, and I trust I never shall; but I think I may have the assistance of their Honours, on hearing causes of *extraordinary difficulty and importance.* The bulk of the cases that are appealed from are not of extraordinary difficulty or importance; but, *in all cases of that class, the suitor shall have the benefit of the other Equity judges being present. There are two or three branches of judicature in which the presence of three judges is infinitely better than that of one:* first, when conflicting *facts* are to be discussed, or conflicting *evidence* to be heard, *a jury is the best forum for such a case — a single judge is perhaps the worst; but three men,* with minds variously constituted, are much more likely to come to a satisfactory conclusion than a single individual. The next is, *where anything like discretion* is to be exercised, either in awarding *damages,* or saying what *costs* are to be paid, which is often a very important, or not unfrequently difficult and delicate inquiry, as too many cases are brought and kept up merely for the sake of the costs. The duty of the judge there is *somewhat like that of assessing damages; and in the exercise of such discretion, it is better to have three judges than one.* Last of all, where there *are great and difficult and important points of law and equity to be settled, it is much more satisfactory to suitors, and to the profession which cultivates the sciences, to have that law considered and settled by more judges than one.* These, then, are the considerations which principally move me to the adoption of *the resolution I have formed.* But, at the same time that I *stop the great bulk of business going before his Honour the Vice-Chancellor,* I shall not deem it necessary to recommend elsewhere that any step should be taken at present to terminate his Court, though in the 53d year of George III. *it was expected that it would end in getting through the arrears.* Though we have now got through the arrears, I do not yet see my way to that which as an ultimate result must be deemed highly desirable. His Honour the Master of the Rolls is more sanguine as to the speedy accomplishment of it than I am; but still I do not shut out from my mind the indulgence of the hope that I may see its termination at no very distant period. *As long, however, as that Court shall continue to exist, I shall endeavour to avail myself, in all difficult and important cases, of the assistance of that most learned, excellent, and able judge, in this Court.* I have said thus much, because I thought it fit, before terminating business, to let the profession know it was not for nothing that I had imposed on them the hardships of these long and painful sittings — sittings, however, not much later — *only two days later than Lord Eldon* has sat; for he having sat to the 29th of August, I have sat only two days longer. At the same time I admit, that though I have sat only two *days* later than usual, yet I have sat many more *hours* in the course of the day, and I am aware of the embarrassments and inconveniences that this may have caused. I am not, however, aware that its tendency has been to abridge arguments in any case, *for I am sure I have endeavoured to show as much patience as any man could possess, that I might not indicate the slightest indisposition to hear the longest arguments.* Even where I have thought argument superfluous, *I have hardly ever stopped the reply, in cases where I have been in favour of the side on which the reply was to be made, and still more rarely have I disposed of cases on hearing one side only.** I, therefore, cannot charge myself with having got rid of this arrear, and accomplishing this dispatch, at the expense of curtailing the hearing of causes. The best proof in the world of this is, that one of the last I heard took up eight hours,

* Why not?

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the one preceding it took seven hours, and another immediately before it took six hours. Three causes, therefore, took upwards of twenty-one hours in being argued at the conclusion of the sittings, which surely is a proof that there was no great desire on my part to curtail the arguments, or not to hear counsel. The profession, therefore, and the Bar, I am sure, will rejoice as well as myself when we find we have not attended in vain, while we very soon shall witness the benefit conferred upon the country by having got rid of this accumulation of business; and also in the prospective arrangement touching the Vice-Chancellor's Court, *to prevent delay and unnecessary expense, to raise the character of the Courts of Justice in this country, and to answer the arguments used by persons unconnected with them — arguments so frequently levelled against the legal profession at large.* The profession will feel not only that comfort and peace increased, *but even their own character exalted.* In conclusion, I have to state, that as long as I remain in town, which must be for some weeks longer, I shall devote one day in every week — Saturdays — to hear motions; I shall hear them *in the private room;* and I entreat suitors not to depend on counsel who are absent, or to get counsel to remain in town for the purpose, but to take such counsel as are in town. I have made inquiry, and I find that there will be several counsel of the greatest ability remaining, and I will hear them upon any motions by consent, provided notice be given on the Wednesday preceding, to one of my officers. I have directed an order to be made to that effect. *I do not mean to make any private arrangements a consideration,* but I wish to have the notice of the motion sent to me on the Wednesday, that I may arrange respecting my attendance in the House of Lords, because I am about now to sit from day to day in the House of Lords during the remainder of the Session; but I shall not sit there any Saturday when my attendance may be required here. I think this Court, *sitting by one of its branches throughout the vacation, for the purpose of hearing pressing applications, is one of the most essential reliefs that can be afforded to the suitor, and is almost essential to the useful existence of the Court and the due discharge of justice. It was a remark of a learned and venerable friend of mine — one among the greatest sages of the law — I mean Mr. Jeremy Bentham — that one of the greatest evils arising from vacations was the shutting up the Courts at the very time when suitors might have the greatest occasion to require access to them. I do not think I can subscribe to the whole extent of his doctrine on this point;* but, undoubtedly, that there is a great benefit to be conferred by keeping always open *some part of the Court* for pressing business, *I most entirely agree with him in holding.*"

His Lordship's address was listened to with profound attention, and received with *manifest satisfaction.*

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PREFACE.

By the *Boa Constrictor*, alias *Helluo Curiarum*, is meant, as will be seen, the declaredly-determined author of a measure for the strangling and swallowing up of the two courts styled the *Vice-Chancellor's* and the *Master of the Rolls'*, into the Chancery Court. To place it — in the manner that will be seen — in front of, or so much as to give insertion to it into, this publication, formed no part of the original intention. The only publication originally intended, was that of which the Bankruptcy Court is the subject-matter. But the closer the scrutiny into that measure became, the more deeply did I become impressed with the painful persuasion, that in a man in whom, for so long a course of years, I have had the honour and happiness to possess a familiar friend, it was in conclusion my unhappy lot to behold an adversary — and that an irreconcilable one — an adversary, and to what? To law reform—to that all important undertaking, to which, from boyhood, the whole of my long life has been devoted. The consequence was, that, in my view, so long as he continued in the all-powerful situation which he now occupies, whatsoever hopes I had ever entertained of witnessing a consummation so devoutly to be wished, could not but remain in a state of extinction: and that, with all the feelings of a friend in relation to him, I saw no choice but acting in relation to him as I am hereby doing — and alas! in so harsh a way — the part of an enemy, — the exclamation "*Et tu, Brute!*" all the while sounding, as it were, in my ears.

This determination being taken, the prefixing the shorter paper to the longer one presented itself as a sort of preparatory measure, that might be conducive to the end in view.

As to the measure more particularly here in question: from first to last, to see the bill thrown out has never formed any part of my wishes. Two results I saw included in it; — the death of the existing state of things in relation to this part of the judicial establishment, with its procedure, and the birth of a new one: in relation to the first, my wishes were in entire accordance with those of my noble friend; in the other alone consisted the difference.

Throughout the whole course of my labours, I believe that one rule has, with undeviating adherence, been conformed to by me — be the institution what it might, never to engage in any such attempt as that of pulling it down, but for the purpose, and with the endeavour, to raise up something that to me seemed better, in the room of it; of the observance of this rule, exemplification will, on the present occasion, be seen under the head of *Amendments*, in the first part of these Observations, p. 578.

The smallness of the type had for its cause the intention of making use of the letter-post for the conveyance of this tract: little did I then think of the length to which it was destined to be drawn out.

Things left undone that ought to have been done — things done that ought not to have been done, — to these two heads will be found referable the charges here made against the institution, the effects of which are now beginning to show themselves: among the things left undone, consigning to one and the same judicatory the business performed by the court called the *Bankruptcy Court* and the court called the *Insolvency Court*; that is to say, under the judiciary establishment as at present constituted, with its system of procedure: for, under the system which I have ventured to propose, suits of all sorts, without any exceptions worth particularizing, would be taken cognizance of by a set of the same single-seated judicatories, proceeding according to the same simple, natural, untechnical, quasi-domestic system of procedure. In the publication intituled *Justice and Codification Petitions*, may be seen a slight sketch of it. As to the things which in my notion of the matter ought not to have been done, to hold up to view a part of them, nor yet more than a part of them, is the business of the ensuing pages.

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I. BOA CONSTRICTOR, *alias* HELLUO CURIARUM:

OBSERVATIONS

ON

THE "RESOLVED-ON" ABSORPTION OF THE VICE-CHANCELLOR'S COURT, AND THE MASTER OF THE ROLLS' COURT, INTO THE LORD HIGH CHANCELLOR'S COURT.

A *Boa Constrictor*, of the first magnitude, appropriately wigged and gowned, crushing in his embrace the bodies, and extinguishing the life, of their two Honours, the Vice-Chancellor and the Master of the Rolls, both of them also appropriately wigged and gowned — no bad subject this for the graver of a *Cruikshank*. All pleasantry apart, I cannot but felicitate those whose hard lot it is to become suitors in equity, at the prospect which such a change presents to view, one stage of appeal at least, and perhaps in some cases two, made to evaporate. Of this halcyon state of things it seems to me that I see a glimpse; may it not prove a phantasmagoric one!

So much for what the Lord Chancellor calls his "resolved-on" *arrangement*. But an arrangement is one thing: a principle on which that same arrangement is grounded, is another: by one and the same person the one may be approved of, the other disapproved of.

"*Number in an Office*"—of these words is formed the title of section 3 of chapter IX. intituled MINISTERS COLLECTIVELY, in my *Constitutional Code:* a proposition I have there advanced is—that, exceptions excepted (and rare indeed, if any, are the exceptions) — be the department what it may, *single-seated* should be every office in that department.* *Single-seated?* For what reason? Answer — For many reasons: but the principal one, and the most appropriate of them all, stands expressed by the single word *responsibility: responsibility* — itself a host of reasons.

"*Number in a Judicatory*" — Of these words is formed the title of section 5 of chapter XII. intituled JUDICIARY COLLECTIVELY, in that same Code: in that section, to the several arguments which, in support of single-seatedness, had been applied to the case of the Administration Department, are added others which presented themselves to me as applying in an exclusive manner, or with peculiar force, to the Judiciary Department.

To these *reasons* (of which further on) I have the mortification of finding opposed, the *authority* of the aforesaid noble and learned Lord, as displayed in the string of dictums stated in the *Morning Chronicle* of the 2d of this instant September, as having been delivered on the occasion of an announced absorption of the Master of the Rolls' and Vice-Chancellor's into the Lord Chancellor's Court: which said oracles of our said *Magnus Apollo* are in the words following; that is to say — "There are two or three branches of judicature in which the presence of three judges is infinitely better than that of one.

1. "First, where conflicting *facts* are to be discussed, or conflicting *evidence* to be heard, *a jury* is perhaps the *best forum* for such a case—a *single* judge perhaps the worst; but *three* men, with minds *variously constituted*, are much more likely to come to a *satisfactory* conclusion than a *single* individual.

2. "The next is — where *anything like discretion* is to be exercised, either in awarding *damages* or saying what *costs* are to be paid, which is often a very important and not unfrequently difficult and delicate inquiry, as too many cases are brought and kept up merely for the sake of the costs. The duty of the judge then is somewhat like that of assessing damages, and in the exercise of such discretion it is better to have three judges than one.

3. "Last of all, where there are great and difficult and important points of *law* and equity to be settled, it is much more satisfactory to *suitors* and to the *profession* which cultivates the sciences, to have that law considered and *settled* by more judges than one.

"These then," concludes his Lordship, "are the reasons which principally move me to the adoption of the *resolution* which I have taken."

There we have his Lordship's dicta.

For my part, my work intituled "Constitutional Code; being," as the title goes on to say, "for the use of all nations and all governments entertaining liberal opinions;" and, for the support and elucidation of the proposed enactive matter, the said work presenting throughout a correspondent quantity of *ratiocinative* matter; it would have been no small satisfaction to me, to have seen the truth of my arguments, which, as above, are

* The department then and there in question, was the Administration Department.

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delivered in support of *single-seatedness* in judicature, subjected to the scrutiny of so enlightened a mind, and to have given to the work in question the benefit of his lordship's observations on the one side or the other, or on both: seeing that the questions are not a few, as to which, with perfect sincerity, by one and the same man (as Sir Roger de Coverley was wont to say) "much may be said on both sides." This satisfaction I might have had, had his Lordship been pleased to add them to the "*pap*" which he was pleased to *say pray for*, and take from a tea-spoon of mine, when sitting on my lap, at the hermitage from which I write: those of the said arguments I mean which apply to the case of the Administration Department, that part of the work being then already in print; to which arguments he might have added moreover those which apply exclusively to the case of the Judiciary Department: for though not yet in print, they were even then in manuscript; and, were it only for the chance, howsoever feeble, of their *now* receiving that honour, I have some thoughts of sending them to the press immediately, and adding them to this paper, before I have done. Speaking of those same wished-for observations, I take the liberty of supposing them as having place on the one side, on the other, or on both.

Unfortunately, neither in any one of the above-mentioned *dicta*, nor in all of them put together, can I find any portion of that sort of matter called ratiocinative, which could with propriety be made to occupy a place in that same work of mine: for, for the support of his Lordship's proposed enactments, *ratiocinative* has, in *ipse dixitical* matter, found, on almost every occasion, if not a more *instructive*, at any rate a more compendious, and, to the furnisher at least, a much more commodious substitute.

Now, then, for the three cases in which, according to his Lordship, three judges are better than one.

Case I. "Conflicting facts to be discussed, or conflicting evidence to be heard." Of the sorts of cases for which three judges are, according to him, better than one, this is the first mentioned. But here comes a puzzle. Good for this case as are three judges, another *forum* he descries and points to as being for this same case still better: nay, so much better as to be the best possible. And this other *forum* — what is it? Even his Lordship's old favourite, "*a jury*." And of what sort of men is the population of that same *forum*, according to his Lordship's declared conception of it, composed? Of "any twelve men," so they be "*good*" ones, and "put into a box:" — "*no* EXAGGERATION" here; so his Lordship was pleased to assure us. Such, after the most mature deliberation, was his Lordship's opinion, as declared on the 7th of February 1828, in and by his self-published speech of that date, p. 5.*

Now, then, comes the puzzle. This *forum* being the perfection of aptitude — of appropriate aptitude, with relation to this very case, — why not on the occasion in question take it in hand and employ it, instead of the *three-seated* judicatory — a tribunal which, *three-seated* as it is, yet, its seats being in numbers no more than a quarter of those of the *forum*, yields still to it in point of this same aptitude?

In the course of the tract intituled "Observations on the Bankruptcy Court Bill," those same arguments may perhaps be given at length: meantime, any something being on this occasion better than nothing, a sort of abridgment of them may be seen in the proposition following: —

As to the conduciveness of *single-seatedness* to the ends of justice, comparison had with *many-seatedness*, no otherwise can any estimate of it be formed, than by the degree of *appropriate aptitude*, in all its branches, which in the two cases is likely to have place on the part of the judge or judges, relation had to the functions of their office. For determining on which side the aggregate of such appropriate aptitude is likely to have place in the greatest degree, let attention be applied to the following propositions: —

1. As in the case of any other functionary, so in that of a judge. The state of the *law* being given, — for every practical purpose, appropriate *moral* aptitude must be considered as exactly proportioned to the strictness of his dependence upon *public* opinion.

2. Singly-seated, a judge finds not any person, on whom he can shift off the whole, or any part, of the imputation, of a mischievous exercise given to any of his functions. Not so, when he has a colleague.

3. No person does he find to share with him in the weight of that odium.

4. No persons does he find in the same situation with himself, engaged by the conjunct ties of self-regarding interest and sympathy, to support him under the apprehension of it, by the encouragement given by their countenance.

5. He has it not in his power, without committing himself, to give to an indefensible exercise made of his functions, *half* the effect of a *vote*, — namely, by purposed *absentation* and non-participation.

6. He finds not, in the same situation with

* "And in my mind" said his Lordship, "he was guilty of no error — he was chargeable with no exaggeration — he was betrayed by his fancy into no metaphor, who once said, that all we see about us — King, Lords, Commons, the whole machinery of the state, all the apparatus of the system, and its varied workings — end in simply bringing twelve good men into a box."

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himself, any person to share with him, and in proportion draw off from him, the whole, or any part, of any lot of *approbation*, whether on the part of his superior officer, or the public at large, that may come to be attached to *extra merit*, in any shape, manifested, on the occasion of any exercise given to his functions.

7. His reputation stands altogether upon the ground of his actions. He finds not in the same situation, any person to help him, as numbers help one another, to raise a *schism* in the public, — and, by the mere force of prejudice — without *evidence*, or in spite of evidence, in relation to specific actions, — to draw after them the suffrages of the unreflecting part of it.

8. Of the quality correspondent and opposite to appropriate moral aptitude, the most mischievous effect is — disposition to exercise arbitrary power. But that which constitutes *arbitrary power* in judicature is — not the *unity* of the judge, but his exemption from the controul of a superior, — from the obligation of assigning reasons for his acts, — and from the superintending scrutiny of the public eye.

9. The reproach of arbitrary power belongs, on all the above accounts, to the authority of many judges, especially large bodies of judges, in contradistinction to that of *one*.

10. The circumstances which render plurality indispensable in sovereign legislature, do not apply to judicature.

11. So many *seats*, so many sets are there, of persons, who, by community of sinister interest, stand engaged to secure the possessor of the situation against responsibility in every shape, for delinquence in every shape. So much for appropriate moral aptitude.

12. Now as to intellectual and active aptitude. In a singly-seated judge, most *intelligence* is likely to be found, in so far as intelligence is the fruit of exertion.

13. A judge, by being single, exerts himself the more from his seeing no resource but in his own powers.

14. Hence, only in the case of a singly-seated functionary can *promptitude*, or say *dispatch*, be maximized.

15. A singly-seated functionary has but one opinion, and one set of *reasons*, to give.

16. No person's opinion has he to *wait* for.

17. No person has he to *debate* with, to *gain* over, or to *quarrel* with.

18. No person has he to put unnecessary *questions* to him, — to propose unnecessary *steps*, — or to necessitate useless *adjournments*.

19. All the advantages that can be expected from a multiplicity of judges, may be insured, in a much greater degree, by a numerous *auditory*, with the addition of the whole world for *readers*, as to everything in the conduct of a judge, that any men think worth their notice; and any advantage that can ever have happened by accident from such multiplicity can be imputed to nothing but the chance it affords for publicity.

20. The advantages obtainable from a *plurality* of heads, independently of exertion, are needed in no more than a small number of cases; and, in proportion as they are needed, may be had, by the help of *advocates* and courts of *appeal*, without putting judges, more than one, into the same court.

21. *To suitors* — that is to say, to persons having business at the office, — causes of *delay* are, in a large proportion of the number of individual cases, to a greater or lesser amount causes of *expense*.

22. If these principles be just, the saving they will produce in the *expense* of the establishment is prodigious. In the expense attending the collection of *taxes* — in the terms of *loans* — in the adjustment of most other plans of economy in finance, a saving of a few *units* per cent. is thought a great matter; *here* it runs to *hundreds* per cent., and the *least* saving is a hundred.

Then as to *facility*. The judicatory presents a difficulty of which the *forum stands*, or (if you please) *sits*, clear. In the judicatory, a condition required is, that the minds of the members be, all three of them, variously constituted; and in this qualification resides the *differential character* (as the logicians say) of the tribunal, its distinctive excellence, its sole alleged title or claim to preference. But, of this qualification, how is the existence to be ascertained? There I see a knot, which, staring his Lordship in the face, cries aloud to him — "*Nay, but you must untie me.*"

Is it by identity — in the first place, of professional practice, — in the next place, of official functions? Is it by the "*vigiati*," and ever so many more than the "*vigiati amorum lucubrationes*" applied by the whole fraternity of them constantly, and with a more than ordinary degree of attention, to the same subject, that this same indispensable "variety of constitution" is to be produced? Uniformity, rather than the promised variety, is the effect I should have looked for from such a set of causes. Shaken out, by "the indiscriminate defence of right and wrong" carried on, through so long a course of years, by "the indiscriminate utterance of truth and falsehood," common sense and common honesty make their escape, while the remaining matter contracts in proportion, subsides and coalesces in all alike into a paste of appropriate shape and colour, as if cast in one and the same mould: insomuch that, when, after the fire of London city, gratitude hung up the portraits of the twelve judges in that case, had not magnificence been preferred to

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economy, one portrait might have served for all twelve: as in the *Nuremberg Chronicle*, in the list of the progenitors and descendants of Abraham, so strong (it was found) was the family likeness, that one venerable head and shoulders, was so managed as to serve, without objection, for divers generations.

Turn now to the *jury-box*. Here all is (as a sailor would say) *plain-sailing*. According to his Lordship, all that is here requisite is — that there be *men* — that they be *good* — that there be *twelve* of them, — and that they be "put into a *box*." Sir Robert Peel requires other qualifications: one is, that they be capable of being packed: but the above is all that his Lordship requires: no need of any "variation in the constitution" of *their* minds: so far from needing it, sooner or later, full or fasting, *nolens volens*, they must be every one of them of the same mind. "Variety of constitution:" by any such property would the twelve minds be rendered the more easily liquifiable into one? Not they indeed: they would, in proportion to the degree of the aforesaid variety, be more intractable and insoluble.

So much as to the question between single-seatedness and many-seatedness, and in particular triple-seatedness. Now for *judges* and *boxes*. If, after all, it be really true, that identity of habits is so surely efficient a cause of variety of constitution, a little arrangement or two there is, which I would humbly suggest for his Lordship's consideration, as promising an ulterior improvement, grounded on his own so deliberately established principles. Let him take the reverend judges, all twelve of them, or whatever be now the number of them, and put them into a *jury-box*, setting down the box in the court of Chancery; and to make sure of that goodness which is the characteristic quality of a juryman, and that nothing which appropriate learning and wisdom can supply may be wanting, let him for this purpose borrow from Lord Tenterden the very jury-box which has so long been diffusing its goodness through the King's Bench. As to his power for making this transference, in his own view of it, at any rate, it stands not exposed to any dispute; "I have power" says he, accordingly — "I have at present power to ask for the attendance of any or all the judges of Westminster Hall."

On the other hand, if this be a little mistake of his (for *nemo mortalium omnibus horis sapit*,) and if accordingly diversity of habits is a surer cause than identity is of variety of constitution, let him once more betake himself to his old favourites the good men and true, and set *them* down comfortably in their own box. I mean not the *special jurymen*: for the squirearchy, being aristocrats, are all cast in the same mould. The jurymen whom I mean are the common jurymen: for among them there will be as many different habits as there are trades.

Now as to "conflicting facts and conflicting evidence." As to this matter, a circumstance which, on the present occasion, seems somehow or other to have dropt out of his Lordship's mind, is — that it is from these same conflicting facts and evidence that judges themselves deduce their conclusions: and not only *common-law judges*, but even *equity judges*: and not only equity judges in general, but even his Lordship himself. Yes: even his Lordship himself. For does he not hear bills and answers?—does he not hear answers to interrogatories?—does he not hear affidavits? And do not these same bills and answers, interrogatories and affidavits, relate to "conflicting facts to be discussed, and conflicting evidences to be heard?" I speak under correction: but really his Lordship puts one in mind of *Monsieur Jourdan*, who had been talking prose all his life long without ever being aware of it. All their official lives long, added to their professional, have all judges — learned judges — been in the habit of hearing and dealing with this sort of intellectual matter: a juryman — the first day of his being put into the box — has not heard a syllable: which first day may also be the last. Here, then, we have on the *bench* the maximum of experience; in the *box* the maximum of inexperience. Here, then, we have a problem calling on his Lordship for solution: required, to show the advantages which, on this occasion (not to speak of other occasions,) *inexperience* possesses over *experience*.

In the box, men have the evidence elicited from them in the best shape; on the bench, in three of the worst shapes it is in the power of human ingenuity to devise: namely, affidavits, answers to bills, and answers to written interrogatories, without any answers to such questions as those same answers might suggest: the deduction depending upon, and varying in great measure in proportion to, the badness and deceitfulness of the shape: but still, is it not on facts — conflicting facts — and conflicting evidence, that the adjudication is made and pronounced in the one case as well as in the other?

True it is, that in the case of the bench the conclusion is styled a *judgment* or a *decree*: in the case of the box, a *verdict*: but what difference this denomination makes in the nature of the matter, I must, with all submission, leave it to his Lordship to determine.

True it is, moreover, all this while, that the question — the principal question — is between judges and judge; not between judges and juries: the question, as to juries, being blown in, by his Lordship, as it were by a *side wind*—in the form of a parenthesis. But,

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howsoever it may have got in, this doctrine was by far too important to be passed by unnoticed. For here may be seen — and from those same most impressive lips, the confession, *Video meliora proboque, deteriora sequor.* The jury-box, with its contents, being the best machinery of the two — indeed, according to your own declared opinion, the best of all possible machineries,— what, on any occasion, and this in particular, should hinder you from making use of it? Surely not any *unpopularity* that you can see in it?

2. Now for case the *second*—namely, "Where *anything like discretion* is to be exercised:" subject-matters of the discretion in this case, "damages" and "costs:" operations to be performed by the light of the discretion, "awarding the damages, and saying what costs shall be paid." Thus far his Lordship.

Where anything like *discretion* is to be exercised? This read, I fell to rubbing my eyes, and said to myself—Am I now awake? That there may be judges who, on this or that occasion, are capable of acting without discretion, is indeed conceivable enough; and perhaps his Lordship may not have any very great distance to look to find one. But, that there should be in existence any such judge as one who, by speaking of the case in which *something like discretion* is to be exercised as being a *particular* case — should give it to be understood, that, in his opinion, by a judge, generally speaking, neither discretion itself— no, nor so much as anything *like* discretion— should be exercised, — this it is that makes me stand aghast.

The plain truth is, that this same word *discretion* is a sort of *arrow*, which learned judges, when in a state of conflict with one another, and in a rhetorical mood, have been seen letting fly at one another. In days of yore, *Hector* and *Achilles* were Lord Camden, Lord Chancellor — and Lord Mansfield, Lord Chief Justice:—"*Discretion,*" exclaimed one day Lord Camden — "*Discretion is the law of tyrants.*" Whence came it to be so? Even from this: — namely, that something about *discretion*, and in favour of it, Lord Mansfield had been *indiscreet* enough to utter. Thereupon, as if *Achilles* had been slain, in placard types was trumpeted forth in the Whig periodicals and pamphlets of the day, this *dictum* of their *Hector*, who, after all, found himself compelled to turn his back upon Seals and Bench. Discretion is the law of tyrants? Yes —and sure enough, in an unguarded moment, something rather approbative than otherwise of the use of discretion had dropt from the lips of the Lord Chief-Justice. I say *unguarded:* for had he put before it the word *sound*, there would have been nothing to lay hold of, and the bolt would not have been shot; nor, if shot, have stuck upon it.

Let me not be mistaken. No such intimation do I mean to convey as that the course my noble and learned friend means to recommend is the law of tyrants: all I mean to say is, that, when employed in certain ways, the word *discretion* is the word of parrots; and that, though the lip it comes from should belong to a head which had ever so full bottomed a wig over it, no determinate idea — no idea capable of entering into the composition of any tolerably effective argument — would come in company with it. So much for the word *discretion*. Meantime, on the present occasion, what is at the bottom of it? If anything, it is this: — when the subject of decision is — not a quantity *already* determinate, such as a house, or a horse, or a sum certain, due on a note of hand — but a quantity which *remains* to be determined, such as a sum of money in compensation for a wound — wound to body, reputation, or domestic peace (*vulgo*, crim. con.) — then so it is, that that which in the way of decision is to be done is—upon a *scale* of greater or less length to make choice of some one *degree*, to the exclusion of the rest. The operation of fixing upon this degree is what goes commonly by the name of *liquidation*. This exposition you will not find in Coke upon Littleton; but upon examination, should you deem it worth the trouble, you will not the less find it to be correct: and so it is, that this mode of decision, commonly called *liquidation*, is of the number of those, the formation of which has from time immemorial been in the hands of a jury. Now, then, as to this same operation, true it is they are used to it. But are they exclusively fit for it? *Semble que non:* no; nor so much as *equally* fit for it. Used to it they are indeed; but how? even as eels are used to be skinned. No eel is used to be skinned successively by several persons; but one and the same person is used successively to skin several eels.

So much for *damages:* now as to costs. When for its reasonableness the quantum of the allowance made in the name of *costs* depends upon the propriety of the degree chosen, as above, — as, for example, in the case of the sort of allowance made to a witness for *diet* in part of travelling expenses,—they may be in this respect, and in so far, upon a footing with *damages:* but in so far as they consist of fees of judicial officers, in this case they are so in but a small degree: generally speaking, these same fees are so many determinate quantities: and so in the case of costs as between attorney and client: so are the fees actually paid to *counsel* — degrees and liquidation are altogether out of the question here. But all this while, all this talk about *costs* (not to speak of *damages*) — what is it to the purpose? Be the functionary in question a jury-man or a judge, make what you will of *discretion*, what difference can it make — what

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difference whether the decision to be formed be called a *verdict* or a *decree*? liquidation, as above described, or any other operation? Talking is one thing; thinking is another: talking (at any rate, in any determinate manner) is less needful at the Bar, more needful on the Bench. On the Bench, talking without thinking makes bystanders shake their heads.

Another thing. Of this same reasoning of his Lordship's, application being made by him — not only to cases "where something like discretion is necessary," in saying "what costs are to be paid," but also to cases where something not less like *discretion* is to be exercised in awarding "damages:" in such sort, that, in those cases likewise, three judges are, according to him, in no less degree better than one: this being the case, may it not be that *these* cases likewise are among those which are resolved by him to be brought within the field of his jurisdiction, as above, in the same manner as these others?

If so, then so it is, that, notwithstanding that for these same cases juries are so much better than judges, their jurisdiction is actually resolved by him to be taken from those same favourites of his. If so, then, alas! how feeble and slippery a thing is fondness in high places!—"put not thy trust," says somebody in holy writ—"put not thy trust in princes." In princes then shall we put our trust? No: nor yet in *chancellors*.

3. Case III. "Last of all, where there are great and difficult and important points of law and equity to be *settled*, it is much more satisfactory to *suitors*, and to the profession which cultivates the sciences, to have that law considered and *settled* by more judges than one."

Settled indeed! — settled — by *judges*, and those Equity judges, three in number, the Lord Chancellor himself included!—as if any "great and important points of law and equity" or any points at all of law or equity, ever had been settled by judges — by judges in the number of three or in any other number: as if it were in the nature of the case that any points at all, of law or equity, ever should be *settled* by judges — by judges in any number, acting as such: as if any point of law could ever be settled by any other instrument of settlement than that which is composed of a determinate assemblage of words, acknowledged to be the words of a determinate person or set of persons, invested with the branch of power styled the *legislative*.

Settled indeed! Yes: if instead of *settling* the one thing needful were unsettling, this is what is in the power not only of the three judges in question acting collectively, but of a single one of them, that is to say, the Lord Chancellor, acting severally. This is what he can do — this is what he understands perfectly how to do — this is what, over and over again, he has done — this is what he has been suffered thus to do, and without any the least notice taken of it: such has been the stupidity or supineness, or such the treachery and cunning of those individuals by whom, in conjunction with their fellow-legislators, this contempt of the highest authority in the state has been left unpunished. As to proof, looking out for proof of the perpetration of this crime would be looking out for proof of the existence of the sun at noonday: in the mind of any law practitioner or law student of a year's standing, the single word *registration* will suffice to call up a swarm of examples of this same securiticide practice. In the miscellany intituled "*Official Aptitude*," &c., in that one of its papers which is intituled "*Indications respecting Lord Eldon*," may be seen an example, not merely of the practice, but of the avowal — the open avowal of it.

So much for *settlement*. Now for *satisfaction* and its conjugates, *satisfactory* and *satisfactoriness*. In this same *satisfaction*, we have the *end in view* which the noble and learned judge has thus declaredly set before him, on the occasion of the "*resolution*" declared to be on this occasion come to by him — the resolution to bring about this great change. Satisfactory? — to whom satisfactory? Some person or persons, in whose breasts the agreeable sensation designated by the term *satisfaction* will have place, in consequence must be found, or no such quality as that which is designated by the attributive *satisfactory* can have been produced by this same change.

Out of the above-mentioned three "branches of judicature" brought to view by his Lordship, as furnishing that same number of *cases* in which "the presence of three judges is" so much "better than that of one" — in two, namely, the first and third, this same word *satisfactory* is inserted in the sentence, and employed in giving expression to this so highly desirable effect. But in the first of the two cases — namely, where "conflicting facts are to be discussed, or conflicting evidence to be heard," — in this case, of the persons in whose breasts the sensation is to be produced, no intimation whatsoever is conveyed.

Remains, as the sole case in which any such information is afforded to us, case the third — namely, as above, the case "where great and difficult and important points of law and equity are to be settled." In this case, then, who are the persons in whose breasts this same agreeable sensation is to be produced? *Answer* — Persons of two classes or descriptions; namely, 1. "The suitors;" 2. "The profession which cultivates the sciences" — meaning (for what other things can it have meant?) the science of law, and the science of equity.

Now then, as to these same two classes,

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that to one of them the change, if affected, *may* be made satisfactory, is what I can conceive; though as to its being *actually* made so, this is more than I could venture to promise myself: this class is that designated by the name of the "profession which cultivates the sciences." But as to the other class — the class composed of the *suitors*, whatever I may have *supposed* on first taking the matter in hand, nothing, upon a *closer* inspection, can I descry in the change — nothing that has any tendency to produce any such agreeable effect. Yes, if neither of their two Honours were to be on any occasion thenceforward present in any court other than that in which his said Lordship sits; on which their own courts would take the flight to the moon: whereupon, as above intimated, there remaining no more courts than one, to these same suitors the corresponding quantity of delay, expense, and vexation, would be saved.

But to say that to both these classes, — namely, suitors, and the profession which cultivates those same sciences, — one and the same arrangement will be satisfactory—to say *this*, is as much as to say, that to the sheep and the wolf one and the same arrangement of the field or the sheepfold will be satisfactory: to the sheep (need it be said,) the arrangement which, on this, as on every other occasion, will be the most satisfactory one, is that, whatever it is, by which the several quantities of delay, expense, and vexation, are minimized: to the profession which, according to his Lordship, "cultivates the sciences," the arrangement which, on this, as on every other occasion, will be most *satisfactory*, is that by which the quantity of delay, expense, and vexation, will be maximized: not that, considered by itself and for its own sake, delay will be thus satisfactory: no; scarcely would it be in any degree satisfactory, were it not for the use it is of in making addition to the expense, and the addition made to lawyers' profit by addition made to that same expense.

That to his Lordship, the arrangement thus by his Lordship resolved to be made, would, if made accordingly, be satisfactory — this is what may, without difficulty, be conceded: but this, howsoever it may have been the end in view aimed at, is not any part of the end in view professed to be contemplated, and endeavoured to be accomplished; insomuch, that when the offspring of the mountain, which in her confinement has had so hard a time of it, has been looked for, not so much as a mouse, it is believed, will be found.

Moreover, as to the fields, which, speaking in general terms, his Lordship speaks of as having for cultivators the persons he mentions, these are "*sciences*:" but of the only two fields in particular, which, as above, are mentioned by him as being cultivated (namely, *law*, meaning common law, and equity,) neither the one nor the other is, in its entirety at least, the subject-matter of a science. The subject-matter of a science is a thing capable of being known: but a thing which has no existence, is *not* a thing capable of being known: of that which is called equity, no part has any existence; of that which is called law, that part which, in contradistinction to statute law, is called *common law*, has not any more existence. An act of parliament *is* really a law: to know what there is in this or that act of parliament — to know, for example, what, under and by virtue of an act of parliament, a man is to pay in the way of a *tax*, — is indeed to be in possession of so much *knowledge*, and that *useful* knowledge: but it is not to be in possession of what is meant by *science;* any more than to know what o'clock it is. To know how to get money, by pretending to know what, on each several occasion, *law* says, or *equity* says, — this may, perhaps, indeed, be said to be a *science:* at any rate, the actually getting money in that way may be said to be exercising the correspondent *art*. But, sure enough, neither the doing this, nor the knowing how to do it, is what his Lordship meant when he spoke of "cultivating the sciences."

The knowledge of what *law ought to be* — that is to say, of that rule of action, conformity to which will, on each occasion, be in the greatest degree possible contributory to the happiness of all persons interested, — this is *indeed* a *science*. But, this science — how many are the men of law that ever thought of cultivating it? What has ever been to be got by it? What motive, of any sort, has any man of law, as such, ever had for cultivating it? What Bench is there that it has ever led to? His Lordship — did he himself ever stoop to cultivate it? — did he ever deign to bestow a thought upon it? Is it anything better than *theory*? And what disdain do not noble and learned lords look down upon *theory* from the heights of practice!

So much for rules and corresponding principles: — Lord High Chancellor's rule, three judges on a bench better than one; corresponding principle, the *triple*-seatedness-preferring principle: — unofficial theorists' rule, one judge on a bench is better than three or any greater number; corresponding principle, the *single*-seatedness-preferring principle.

So much for rules and principles. Now for the application made of these same rules and principles — the application made of them by his Lordship to the particular case in question. What now shall I say of it? To speak of it, I must either profess to understand it, or profess not to understand it. Of these two opposite professions, the first is what I feel myself utterly unable to make, consistently

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with truth: irresistibly, therefore, the other forces itself upon me. Of this dictum of his Lordship's, the meaning not being tangible, left to me are the words: these I must take in hand, and send my thoughts abroad in quest of some meaning for them.

At a former time, to which I see allusion is made by him, what he proposed stands thus expressed: — "I proposed, therefore," says he, "that all causes of difficulty or importance, in point of value, or from the law as applying to them, should at once be transferred here and be heard by me, as thereby the inevitable appeal" (meaning, I suppose, the otherwise inevitable appeal) "would be averted. The event," continues his Lordship, "has justified my prospective conjecture, and leads me now to form the plan which I shall certainly adopt — namely, the transferring the bulk of that business" (meaning equity business in general) "to this court," (meaning the Lord High Chancellor's Court, in contradistinction to those of the Vice-Chancellor and the Master of the Rolls.) Thus far his Lordship.

Now, then, as to *importance*, not to speak of *difficulty*, on the occasion of the *application* made of *the law*, — where is the cause that is not of importance? If that which is of importance to the suitors, or to one of them, is of importance, then (as the madrigal has it) "ten thousand pound to one penny" — no one such could be found. A cause which swallows up the whole of the property a suitor can command — is *that* cause of the number of those that are of "*importance?*" In point of value, sufficient to swallow up the whole of the property of nine-tenths of the good people of England, not to say ninety-nine hundredths, would be found to be, in the case of the least importance that ever came before the court, the costs expended upon it before it had received its termination: the *costs*, I say, over and above the value of the subject-matter of the dispute.

Now, then, if so it be, that on the subject of importance as applied to a law or equity suit, there be in his Lordship's mind, enlightened as it is, anything of a misconception, where shall we look for the cause of it? Shall it not be in the loftiness of the situation occupied by it? In the eye of the learned profession and the opulent aristocracy, there are two classes of men whose happiness is of importance; namely, the said professional class and the said aristocratical class; forming, together, say between one-tenth and one hundredth of the whole community: there is one class, the happiness of which is of no importance; namely, the remaining nine or ninety-nine. On this theory, on a careful examination, has been found to be built the whole structure of the judicial establishment in England, and the whole of the system of procedure, according to which that establishment conducts its operations — an establishment and a system having for their object or end in view, in as large a proportion as may be, the dividing between the learned profession and its best customers, — namely, the dishonest among the relatively opulent, the property of the relatively unopulent suitors: for such is the effect — the manifested, the uncontroverted, the uncontrovertible effect — of factitious costs, and the system of procedure organized for the purpose of giving admission to them in the largest quantity possible: demonstrated may all this be seen in the *Petition for Justice*.

Well: but, for argument's sake, let it be admitted that some causes there are which are *not* of importance. Thereupon comes the question — *how* — by what *criterion* — can those who are empowered, and at the same time disposed, if any such there be, to distinguish, — and distinguish in time to prevent suffering, — those causes which are *not* of importance, from those which *are*: and, in addition to this, comes, moreover, that other question, as to *difficulty* — the question — between those which are *not* of difficulty, and those which *are*. In the case of each individual cause, is there to be a sort of preliminary *trial*, or equivalent to a trial, for the purpose of ascertaining whether or not it be of *importance?* And so, moreover, in regard to *difficulty?* If so, by what course are these several *preliminary* suits or causes to be respectively conducted? — by *bill in equity?* — by *petition*, as in a bankruptcy case? — by a *grand jury*, as in common-law penal cases? — or by action, real or feigned, as in a civil cause? — or would not trial by *cross and pile* be preferable to them all? for, at any rate, it would save, or at any rate, if his Lordship pleased, might be made to save, *costs*.

One thing we are informed of, and that is, — that of the aggregate number of causes, the great *bulk* will enjoy the benefit of this same exaltation; but still the number of them — the absolute and relative number — remain to be grasped at by conjecture.

Now, then, comes the transference — the so determined *transference*. What, on this occasion, can his Lordship have meant by *transference?* — to what causes was it meant to apply? — to causes already in existence, or future contingent causes, and those only? — or to both classes? In each of these two respectively, by what *hands* is the transference to be made? — in what hands is it to originate? Will his Lordship, *ex mero motu*, go to the court below, take in hand the *record*, lay it on his shoulder, and thus carry it bodily into the court in which he so illustriously reigns? saying or not saying — this cause is of sufficient importance to be, in the first instance, and thereby to a certainty, heard and deter-

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mined by me? — of too great importance to be entrusted at all to such a man as you, Sir Launcelot Shadwell, or to such a man as you, Sir John Leach, otherwise than in *leading strings*, with myself to hold them? Or will he wait for some one else, and who, to *move* his Lordship for leave to bring up the cause into his Lordship's high court? In this latter case, the motion — will it be a motion of course, or must it be a motion for a rule to show cause why this new sort of *certiorari* should not issue, with liberty, on the other side, for cause to be shown accordingly?

Difficulties upon difficulties thus stand in the way of this arrangement, the design of which is to remove difficulties — difficulties, and those such as I cannot but think will be found to be insuperable ones.

So much for the *causes*, and the *transference* so resolved to be performed of those same *causes*. But now for the *judges* — the two other *judges*, whose destiny it is to hear, or be present at the hearing of, and to help determine, or be present at the determination of, those same causes. By what means, in what manner, are they to be transferred from their respective inferior benches to his Lordship's superior bench? This same transference — will it be *agreeable* to them respectively? Will it be (to use his Lordship's word) *satisfactory* to them? May it not happen to them to be more or less recalcitrant? On the one bench sits the *Master of the Rolls:* but another seat there is, on which, if not now, it may happen to him to sit any time; and that is a seat in Honourable House. In that house sat lately the most illustrious of his predecessors, *Sir William Grant;* and in support of aristocratical swindling, and against the cause of moral honesty and payment of just debts (Romilly *è contrà*,) knight's service did he do there.

Should, then, either of these demur, will he send his messenger to them, as did in Charles the First's time the Honourable House, to take them bodily off their own benches, and set them down on his Lordship's? — or will he himself take them up in his noble arms, and on each shoulder, St. Christopher-like, carry them off, and so deposit them?

To save this trouble, will Lord Tenterden lend him a *mandamus?* Scarcely without an act of parliament to warrant it, the attainment of which, in case of need, seems indeed to be among the number of his Lord Chancellorship's resolves. But then will come committees, and first, second, and third readings to both houses, and objections upon objections.

So much freer from difficulties would be the jury plan — the plan so decidedly pronounced by his Lordship to be the better of the two. "*Good* men," in the shape of jurymen, are as tame and obedient as spaniels. Show them a box, and call it a jury-box; they run into it at first word. Vice-Chancellors and Masters of the Rolls — the more I think of them, the clearer I am that they would run rusty. I hear them remonstrating and preaching — I see them kicking and sprawling, with clouds of powder flying out of their wigs, before they can be brought, if ever they can be brought, to sit still under his Lordship's eye, and nodding approbation in obsequious silence.

Before I leave this topic, let me give utterance to another humble wish I have formed, which is the wish to know, whether (jurymen apart) the preference given to the greater over the lesser number stops at the number *three*, or whether, if he could get any, and what *greater* number for his puisnes, he would do so, his stopping at number *two* having no other cause than that he knows not very well how to get any more of them. To my humble apprehension, if in any degree that "*variety of constitution*" in which he puts his trust were to be found in number three, it would, in all probability, be found in a still higher degree in number four; and so on in the numeration table. If it be in superior magnitude in number, in conjunction with "*variety of constitution*," that he puts his trust, I could point to situations more than one, in which he might find judicial characters for puisnes with less danger of difficulty than in the two only ones he as yet speaks of: for example, Masters in Chancery, Magistrates paid, Magistrates unpaid, men qualified to be special jurymen, men qualified to be grand jurymen; and, to add dignity *ab extrà* to intrinsic aptitude, even a Lord or two might, with less reluctance than the Master of the Rolls (not to speak of the Vice-Chancellor), be prevailed upon to lodge their sitting-parts on the high bench.

For my own part, my own opinion, right or wrong, is at any rate clear, determinate, and self-consistent: it is — that so far as depends on *number*, in the case of a judicial situation, aptitude is as the number of the functionaries occupying it, inversely; were it only because responsibility is so: or in other words, inaptitude is as the number directly, and for that same reason. Now, then, what on this occasion I could wish to know is, whether in his Lordship's opinion this same proportionality has place — the only difference between us being that between the *inverse ratio* (I speak here to the noble and learned mathematician) and the *direct;* or whether the numbers to which on this occasion he gives his preference, follow one another in perturbate order (as Euclid has it,) like cards in a pack well shuffled, or in the regular rank and file order of the numeration table.

If Masters in Chancery would be "satisfactory" to him, I dare answer for him and them, he might, without any dissatisfaction

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on their part, have them to sit with him; and in whatever number would be most "satisfactory" to him: especially if they were to have, each of them, all the while, a newspaper to read, or pen, ink, and paper, to write letters with (as some learned judges of superior order have been seen to do, while learned counsel were straining their throats:) the Master's clerks doing, all the while, at their respective chambers, the business which their said Masters were paid — by a fee for each business — for pretending to do. An additional source of *satisfaction* in this case is, that those same assessors would, every one of them, *know his place*. This place is, on each side, that which is as far from that of his Lordship — the Lord High Chancellor — as possible: his person being encompassed with an atmosphere the repulsive quality of which is strong enough to produce that decorous effect. Such, at least, speaking from the testimony of my senses, used to be the state of these things in former days: nor could I, without a sentiment of commiseration, behold one of these learned gentlemen in the state of humiliation to which he seemed doomed: his Lordship not taking any more notice of him than if he were a post. A Master of the Rolls or a Vice-Chancellor — would he submit to this? I question it.

This change, then, supposing it effected,— what would be the effect of it? Just so much pure evil—evil, without a particle of the matter, or in the shape, of good: the business of the two subordinate courts interrupted and deteriorated: and the business of the highest sphere — of the sphere illumined by the brightest luminary of the law — the business of the superordinate court, not benefited nor advanced, but retarded also: the suitors of the subordinate courts—such of them at least as are *in bonâ fide*, not wilfully employing the power of those same courts as an instrument of depredation or oppression—these ill-starred men, vexed by delay: the practitioners in those same subordinate courts vexed likewise, and by that same cause: and to conclude the train of mourners, the two unhappy subordinates— mutes, and, for the loss of their own business, mourners — their two Honours, vexed likewise: vexed, by being humiliated, dislocated, disempowered, dishonoured, and metamorphosed into mutes: singing, when out of court, diswigged and disgowned — singing in doleful ditty and duet,

"*Nos inhonorati et donis patruelibus orbi.*"

As for me, when I entered upon this discussion, as the reader may have observed, a ray of hope beamed upon my mind. Imagination presented to my view stages of appeal, one or even two, eliminated: so much delay, expense, and vexation saved: the matter of a mixed mass, composed of *salaries* and *fees*, kept in the pocket out of which in the present state of things it is snatched. This hope, alas! has now, for some time past, been dissipated. "My wish was father," my imagination mother, "to that thought." Still would sit their two *Honours*, pressing, not less heavily than at present, with their dead-weight upon justice. Delay, far from being diminished, would, as above observed, be increased; for while with their sitting parts on the High Bench, they were constituting part and parcel of the living stock of functionaries of that court, the business of their own court would be at a stand.

Of this disastrous truth, a sad confirmation is afforded (how could I overlook it?) in and by one of the very sentences, in which his Lordship makes mention of this transference. "I have power," says he, "to ask for the assistance of any, or all of the Judges of Westminster Hall; and I know not why I should not have the power of asking to be assisted by the presence of the Master of the Rolls and the Vice-Chancellor, *when necessity requires;*" having in view, of course, the familiar phrase "ask and have." Now, then, what is clear is — that no such "resolution" can ever have taken possession of his Lordship's mind, as that of absorbing into and swallowing up in, his own noble and learned maw, the whole power of all those same learned judges put together: as well might he swallow up those same learned persons themselves — flesh and blood, bones, wig and gown, and all; nor at the same time is any distinction expressed, between what he proposes to do by the two Equity judges — the Master of the Rolls and the Vice-Chancellor — on the one part, and what he proposes to do by those same common-law judges, on the other part. And as to the resolvedly devoted pair of judges, what is it that it is his resolve to do?— to keep them tethered down to his girdle, in his own custody, during the whole of their official lives? Oh no: only "*when necessity requires:*" and this her *requisition* — when is it that Dame *Necessity* will make it? *That* will depend altogether upon his own noble and learned discretion. To his Lordship, on each individual —yes, *individual* — occasion it will belong to determine in what place or places they shall be; and, for aught that anybody else will be able to tell, they may, at all times, be in a state of vibration, like a pair of pendulums, between the Court of Chancery and their own proper courts.

As to myself and my own labours,—I have spoken as above, of the retribution they have received by the tokens of approbation here and there expressed in relation to them. In and by the following passage, with which this same speech of my noble and learned friend concludes, I cannot but behold a rich reward — honourable to me on whom it is bestowed

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— not much less so to him to whose magnanimity, under such provocations as it has happened to him to receive from me, I am indebted for it: — "It was a remark," says he, "of a learned and venerable friend of mine, one of the greatest sages of the law — I mean Mr. Jeremy Bentham — that one of the greatest evils arising from vacations was the shutting up the courts at the very time when suitors might have the greatest occasion to require access to them. I do not think I can subscribe to the whole extent of his doctrine on this point; but, undoubtedly, that there is a great benefit to be conferred by keeping always open some part of the court for pressing business, I most entirely agree with him in holding."

On the social part of my mental frame, this token of kindness has made the sort and degree of impression which it could not fail to make: but neither by this nor any other impulse, am I to be turned aside from my duty to that public, to the service of which the labours of my life have so long been devoted. That I am not to be corrupted by gold, is already pretty well known: it will now be known that I am not capable of being corrupted even by gratitude.

Would that, by anything I could say or write, I could turn aside my noble and learned friend from bit-by-bit (the word is his) — from bit-by-bit, and ill-considered, unconcocted, incoherent, and unseasoned, supposed reforms or improvements in legislation. My portfolio, my arms, my heart, are still and always will be open to him. Had he but on this occasion had the command over himself to resort for information to that source from whence, at his desire, information on kindred subjects had been so amply communicated to him, and in some sort profited by, (alas! that it had but been a little more profited by!) the disappointment to which so insufficiently considered a proposed and declaredly-resolved-on arrangement seems inevitably doomed, with the mortification inseparable from the failure, would not (I cannot but think) have been experienced.

To the functions of judicature, then, let him confine his exertions and his "hope of glory:" as to legislation, so far as regards origination of measures, leaving the field to him, whose proficiency in that branch of art and science was recognised some years before the existing successor of Lord Bacon saw the light.

Never, without violence done to my feelings, is condemnation, how loudly soever the occasion may appear to me to call for it, passed by me upon any part of the character or conduct of a friend; never, without satisfaction to those same feelings, is commendation, when it presents itself as deserved, paid by me, even to an enemy.

A subject which I contemplate with sincere and unalloyed delight, and with which it rejoices me to be able to conclude this unavoidably polemic discussion, is the dispatch — the altogether unexampled dispatch — spoken of by his Lordship in this same speech, as given by him to the business of that court, on which it casts so bright a lustre. In what light does it not place the *job* — the justice-obstructing court, set up by the most indefatigable, implacable, and irresistible enemy to justice and human happiness, that his situation was ever filled by: — that *job*, which Romilly, one of the earliest and most attached of my disciples, so strenuously and so fruitlessly fought against.

By the "indiscriminate defenders of right and wrong," this dispatch, with the relief afforded by it to suitors, is murmured at and attacked. Against these attacks, one part of the defence I had rather not have seen. When convinced, from the statement of the party's own advocate, — convinced of his being in the wrong, — this judge's way (he tells us) was — to keep the other causes waiting, while the advocate, on the other side, was taking up the time of the court, in labouring to prove his being so. Favourable and gratifying to advocates is, of course, such patience, such licence, such indulgence. Yes, indeed, to advocates — but what is it to suitors? This comes of having judges, whose apprenticeship, instead of being served under masters whose interest is identical with, is served in fellowship with those whose interest is irreconcilably opposite to, that of the whole people besides, in their capacity of suitors, and those who, but for the prohibitive factitious expense, would be suitors. But this is human nature. Who is the lawyer's neighbour? His brother lawyer: this is the man whom he loves next to himself. This is lawyers' law and lawyers' gospel. Being competitors, they, indeed, like harlots of the other sex, hate one another: but not the less do they, like wolves, herd together, and join in hunting and devouring their common prey.

Not quite so much regard as is wished by the Bar is paid by him (I hear it said) to anterior decisions. May be so: but, be it ever so little, quite as much is it as is wished by me. Are you an Equity judge? Pay no regard at all (say I) to anterior decision: set before you, on each occasion, this one end in view — this one principle — the *disappointment-minimizing* principle. Pay any regard to them? Why should you? No otherwise contributory to human happiness was any one of those decisions, than in so far as it operated in conformity to that all-beneficent and all-comprehensive principle. If so, then why not, under its guidance, take the direct road, instead of passing through those tortuous tracks, which, intentionally or unintentionally,

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have so continually turned themselves aside from it? When, with *equity* on his lips, a chancellor first entered upon this devious course, what regard paid he to the anterior decisions of the till then only class of judges — the *common-law* judges? For justifying such his deviation, what plea could he have made, if it was not this? "Pursuing on this occasion *their* rules, the judges would produce disappointment: taking the course *I* take, I prevent it." Such, in spirit and in purport, must, if questioned, have been the defence of the first equity-administering judge. Such, at any rate, is the doctrine which, in my proposed experimental measure of law reform — my Equity Dispatch Court Bill—I venture to preach—the course which I propose that my dispatch court judge shall be empowered and called upon to take: he to whom it appears that he "knows cause or just impediment why" the same should not be taken, let him "declare it."—"This the first" and "last time of asking."

Not only on the subject in this speech mentioned by him — namely, the undiscontinuity of the administration of justice, — but moreover, on that which, on the present occasion, is the principal subject, — namely, the most appropriate number for the seats on an official bench, — before the public eye, and thus courting that of my noble and learned friend, has, for this twelvemonth or more, been *my opinion:* witness my *Constitutional Code,** on which occasion, with scarce an exception, *single-seatedness*, as opposed to *many-seatedness*, is advocated as the only defensible arrangement. True it is, that the only offices there under consideration are those of the administration department: and those here in question belong to the judicial department. But in that section, with its sixteen pages, not an argument is there which applies with less force to the judicial than it does to the administrational department. In another part of that same work,† to the arguments which, as above, apply in common to both departments, are added others, which, in an exclusive or peculiar manner, apply to the judiciary. To these, they not being yet in print, I may perhaps, before I have done, give insertion here.

* Ch. IX. MINISTERS COLLECTIVELY; § 3. *Number in an Office:* Vol. I. p. 216.

† Ch. XII. JUDICIARY COLLECTIVELY; § 9. *Number in a Judicatory.*

II. OBSERVATIONS ON THE BANKRUPTCY COURT BILL.

THAT the "rights" in question "may be enforced with as little *expense*, *delay*, and *uncertainty*, as possible"—this (and in these words) is the professed end in view, as professed in and by the preamble.

Thus much for *profession* — placed thus, and with uncontrovertible propriety, in the front of this important instrument. Between this profession and practice, let us now take the earliest opportunity of observing what sort of *agreement*, or other relation, has place.

I. First as to *expense*. This has two branches: one, that which is charged upon the public stock; the other, that which is laid upon the shoulders of the parties.

First, then, as to that part of the expense which is charged upon the public. Here presents itself, to the very slightest glance, and without possibility of contestation, ground sufficient for denominating the *judicatory* a pickpocket *court* — and the measure a pickpocket measure.

Judges, in number four, to do the business of one: superfluous situations with superfluous salaries, three out of the four.

Instituted by this bill are two sorts of courts: the one first mentioned the superior of the two — this to act in lieu of that which at present is held by the Lord High Chancellor: the other — the inferior — to act in lieu of those which are at present held by the existing Commissioners, seventy in number.

In the superior court, at present existing, and by this determined to be superseded, what is the number of the judges? *Answer:* Number, one: one, and no more.

Here, then, is innovation: and for this innovation, what reason assigned? None whatever: no, nor so much as the shadow of one. But this determination—this *effect*—has, like every other effect, its *causes;* and, in particular, its *final* cause — its end in view: and this end in view—what is it? *Answer:* Until some other shall have been assigned — profit to the Lord Chancellor — the author of it: profit to him in the shape of *patronage*.

Now as to the amount of public money thus caused to be wasted; and of the private emolument for the sake of which the waste is ordained.

The expense is distinguishable into two parcels: that which is laid on the shoulders of the public at large; the other upon those of the individuals interested.

1. First as to that which is laid on the shoulders of the public. Mark well the items of it;

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Lords' Bill, page 16, § 44: in the Commons' Bill, nothing on the subject making its appearance.

1. Chief Judge, ...	£3,000	0	0
2. Puisnes, three, ...	6,000	0	0
3. Commissioners, six, . . .	9,000	0	0
4. Chancellor's Secretary of Bankrupts, ...	1,200	0	0
5. Registrars, two, ...	1,600	0	0
6. Deputy Registrars, eight, . .	4,800	0	0
7. Secretary's First Clerk, . . .	500	0	0
8. Secretary's Second Clerk, . .	300	0	0
	£26,400	0	0

EVENTUAL
PENSIONS OF RETREAT.

1. Chief Judge, ...	£2,000	0	0
2. Puisnes, each, ...	1,000	0	0
3. Commissioners, ...	1,000	0	0

SUPERANNUATION PENSIONS,
After Forty Years' Service, or Disabilitative Bodily Affliction.

1. Secretary of Bankrupts, . .	£600	0	0
2. Secretary's First Clerk, . .	250	0	0
3. Secretary's Second Clerk, . .	150	0	0

Now then for the several functionaries thus appointed and salaried.

1. As to the three *Puisnes*. What is the *use of them?* None whatever. What is the *pretence* for them? Pretence *alleged*, none whatever. Pretence *insinuated*, perhaps this: — namely, that which is, perhaps, in § 1, at the bottom of the words, "shall be and constitute a court of *Law and Equity*." Now then, before the word *equity*, why insert the words "*law and?*" *Answer:* Because, whereas a court, which is called a court of equity, and nothing but a court of equity, *has* in it but *one* judge, and therefore is not understood to *need* to have more than one judge: on the other hand, a judicatory, which is called a court of *common law*, has always had four judges, to whom has been recently added another, and is therefore understood to *need* to have four judges. This being the case, by these same well-imagined words "*law and*," to all men who, superior to public opinion, are determined to concur in picking the pocket of the public of £6000, reasons in abundance will be furnished: by *these* words, at any rate, if not to any other words in the same number; though for these same *three* situations, by no other person in these same words will be seen any reason at all, or so much as the shadow of one.

The *Court of Exchequer*—may not this judicatory have been looked to as a sort of *prop* to the pretence? — seeing that in this same court of Exchequer there have been in all days *four* judges, and now of late days, *five:* and, as this judicatory acts sometimes according to equity rules, as well as sometimes according to common-law rules (what a system!) this idea of it may (it was hoped) be suggested by the words "*law and equity.*" Good. But what will their three puisneships be the better for this *precedent*, such as it is? Of the business, the cognizance of which belongs in common to both, has the four-seated judicatory ever had — what shall we say, a fourth, an eighth, a tenth part—of that which the chancery court has had? Not it indeed. In other words, has it had a fourth, sixth, eighth, or tenth part of the confidence? Not it indeed.

2. Next, as to the "*Secretary of Bankrupts*" under the new court of Bankruptcy, as it is called. What is he to do? *Answer:* What the secretary of bankrupts under the "*Chancellor's* court of Bankruptcy" used to do, will of course be the answer, if any answer be attempted to be given. And under the Chancellor's court, what was it that the secretary of bankrupts used to do? In the business of procedure — of judicial procedure — absolutely nothing, if I can believe my eyes. Look over all the books that have ever been published on the subject of bankruptcy: what one piece of business will you see stated as being done by him? Not one. Under the denomination of registration would come the operation performed by him in relation to bankruptcy, if any operation relative to that business had been performed by him; and in that case it would fall to be performed by the functionaries instituted by the bill, under the name of *registrars*. But the case is, that no such operation was performed by him. What, then, is it that he used to do? If anything, that which a dishonest porter sometimes does at the house of a nobleman, when, for the confession that his lordship is at home, he exacts a fee for admission into his lordship's presence.

If, then, by the learned lords and gentlemen concerned in the drawing up of the bill, it had been intended that, for this same salary of £1200 a-year, anything should be done, that which it was intended should be done by him would in this same bill have been specified; but in no part of it have I been able to find any such thing specified.

A curious enough circumstance is this. Under what title is it that this same £1200 a-year is given to him? Under the title of Secretary to the new court substituted to the Lord Chancellor's court — namely, the so called "Court of Bankruptcy?" No; but under the title of "*the Lord Chancellor's secretary of bankrupts*," a denomination by which, in this bill, he is constituted a functionary of and in a judicatory, which by this same bill is put out of existence.

3. Then comes the secretary's *first* clerk,

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salary £500; and for this same £500, what is it he is to do? *Answer:* Help his master while doing nothing.

4. Lastly comes this same secretary's *second* clerk. And what is he to do? *Answer:* Help his master and his fellow-servant while they two are doing nothing.

Meantime, as to this part of the business, one thing there is that fills me with astonishment. Money matters are all these. Mention of them — where is it to be found? In the bill brought into the House of Lords, and printed for the use of the House of Lords. Where is it that it is *not* to be found? In the bill moved for, that brought into the House of Commons, and printed for the use of the House of Commons. At the moment at which I am writing, no provision is there for this part of the expense. Provision? No; nor so much as any the least intimation of any expense which there was to be. Everything of the sort remains to be introduced in the form of an *amendment*. Of this manœuvre, what was the object? The answer I must leave to those who are conversant with parliamentary manœuvres; to me it is a perfect mystery.

A money bill — a money bill, in effect as well as form — a money bill, with all the money clauses, the sums not left in blank, but *specified* — brought into the House of Lords; into that branch of the constitution in whom the exercise of any such power is a violation of the declared principles of that same constitution: those same clauses not to be found, any one of them, in the bill brought into the House of Commons — in the bill brought into the only house which is competent to the insertion of them: this same House of Commons' Bill being, at the same time, in the wording, in all other particulars, identical with it; save and except § 18 and 42, nothing corresponding to which has place in the Lords' Bill: though there is not, in either of them, anything that could constitute an objection to its being there.

Mark now the considerations, which in the mind of the *fundator incipiens* (to judge from all appearances) gave birth to the *financial* part of the measure; mark well the *order* in which they appear to have presented themselves. Matter of the existing grievance, the enormous multitude of the existing official situations, and thence the enormous bulk of the aggregate mass of emolument flowing from them. These sources of emolument being determined to be extinguished, and with them the emolument itself, now comes a problem to this effect: what is the maximum of the mass of emolument, which, consistently with the rules of prudence, can, on the most plausible grounds that can be found, be established in lieu of it? Such being the question, — for answer to it, presented themselves the several names of *offices*, now existing on this part of the field of judicature, — "so many there are of us," said they — "so many *pegs* you will see, on which, under the new arrangements, a number, more or less considerable, of new offices — one, two, and so on, as far as eight — may be hung; with salaries, raised, each of them, to the greatest height, which there can be any reasonable hope that the public will endure the weight of: and whereas, in the case of the existing system of the *hats* hung upon the pegs, the number is so great, and the aggregate of the expense consequently so great — hence it is, that under the new system, to the several pegs, with the comparatively small number of *hats* hanging on them, may, without scandal, be attached (it is hoped) a mass of emolument much greater than any which, under the existing system, has been attached to any one of the situations belonging to this part of the field of judicature. These matters — these matters of *primary* — not to say of *sole* — importance — being settled, the next question (it might seem) would naturally be — what are the *functions* which it may be proper to allot to these several official persons? — to attach to these several official situations?

But, to these same questions, the answer, if given, would be tiresome to the reader, still more so to the draughtsman, and, not impossibly, calling upon him for attainments, for which he might rummage his mind longer than would be agreeable to him, before he found them: and thus it was that the salaries were left to stand upon no better ground than what has been seen. Such, as will be seen, the number of these pegs, all of them hollow and empty. On the surface, the name of an office; beneath it — within it — functions, none: "a beggarly account of empty boxes."

These same sweets of office (the salaries) being thus as yet *in petto*, remain to be brought upon table in the sort of *charger* styled an *amendment*. In addition to this amendment, or string of amendments, or rather in lieu of some of them, one other amendment, or string of amendments, I would venture to propose. Instead of being wasted upon three logs, designated by the style and title of "*other judges*" — as if for the purpose of standing in the way of the one only efficient judge styled *the chief judge*, — let the £6000 a-year be *sans façon* put at once into the pocket of their creator and patron *designatus* the noble and learned father and author of the measure. Yes: seriously it is — yea, in sober sadness — that I come forward with these amendments. *Waste of money*, the same: but from the list of the public functionaries, of whose emoluments the matter of corruption is constituted, three would thus be struck off: and, what to so many thousands of unhappy and legally plundered debtors and cre-

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ditors is still more sensibly important, so many instruments of certain delay and probable misdecision, and exemption from responsibility, annihilated.

Thus manifest are now the tokens of self-conscious guilt, which have betrayed themselves in the face of the measure. In an ordinary case, the sums are left in blank; left to be filled up in the committee. Even this is bad practice; and bad practice recurred to, not without a correspondent bad purpose. For, how many are the cases, where the sums belonging to the measure constitute the vital part of it; insomuch, that let the sums be so and so, the measure is a right and proper one; if so much more, a wrong and indefensible one. What, then, would be the proper course? *Answer:* To put figures in every instance — a general understanding having place, as at present, that in a certain stage of the business the propriety of this will come under discussion.

So much for ordinary practice.

But, in the present case, what is the course taken? Not merely are the sums left in blank, but the sections (16 in number,) of which the sums in question are the subject-matter, have not, any one of them, a place in the bill, as printed by order of the Honourable House. So that now, on Tuesday October the 4th (the day to which, after a struggle to prevent adjournment, adjournment was made of it,) this part — the vital part — of it — the most manifestly and flagrantly objectionable part of it — will not be before the House.

Yet, for information thus indispensable, a *succedaneum* was at any rate to be found. And this *succedaneum* — what was it? A verbal statement by the Attorney-General: against misconception, against misrecollection, no security. Time requisite for consideration thus denied; and, for this miserable advantage, such as it is, the course taken so extraordinary—not to say (though so I should expect to find it) unprecedented.

II. So much for expense to *public:* of expense to *suitors*, a little further on. Now as to *delay;* after noting, *en passant*, that of delay, expense to *suitors* is an accompaniment inseparable.

Mark here too the sort of relation between *promise* and *performance*. *Promise*, delay minimized; *performance*, by addition made to *number* of *stages* of jurisdiction, not to speak of other causes, delay more than *doubled:* to the two stages found in existence, three others *added:* and note — that, while in each stage it is only in a *retail* way that delay is produced, — it is in a *wholesale* way that, where an additional stage of jurisdiction is the engine, this nuisance is manufactured.

To come to particulars: stages found in existence, two: —

1. Immediate judicatories, the courts held (all upon the same stage) by the existing seventy commissioners:

2. Appellate judicatory, the court held by the Lord Chancellor.

These stages, the only ones: from Chancellor to House of Lords, appeal none.*

Stages additional erected by the *bill*, *three*: total number, *five:* they here follow altogether; *ascendendo*, as before: —

1. Immediate judicatory, court held by one commissioner. See § 6, 7.

2. Judicatories next above *that* — say *appellate judicatories* of the *first*, meaning the *lowest*, order; two courts, styled Subdivision courts, held by *some three* (quere, *what* three?) out of the six commissioners above mentioned. Court appealed *from*, the six courts constituted by the six commissioners, each acting singly, as above. See § 6, 7.

3. Appellate judicatory of the *second order*, the judicatory of which the style and title is "*the Court of Bankruptcy*," — with its four judges, as above; but under the name of *Court of Review;* courts appealed *from*, the two subdivision courts just mentioned. See § 2.

4. Appellate judicatory of the *third* order, the court held by the Lord Chancellor: court appealed *from*, the said court of bankruptcy, under the name of the *court of review*. See § 3.

5. Appellate judicatory of the *fourth* order, the court composed of the House of Lords: court appealed *from*, the court held by the Lord Chancellor. See § 37.

III. Lastly, as to *uncertainty*. Promise, minimization of it: performance, *augmentation;* maximization, the magnitude of which bids defiance to all bounds. On this head, matter for a volume might be found; a few specimens may (it is hoped) suffice; at any rate, they will exhibit as much as, perhaps more than, will be found endurable.

1. Under the head of *delay*, mention has just been made of the *Immediate Court*, held by a *singly-seated* commissioner, as constituting the first stage. But this same first stage is wrapt up in a thick cloud.

In § 6, it is stated, and without room for doubt, that of the six commissioners therein mentioned, every one may sit and act by himself; and so likewise in and by the next § 7; and thus we have a sort of promise or shadow of six *single-seated* judicatories. But these same six single-seated judicatories, supposing them to have existence, who can say how many of them, and at what time or times respectively, they shall be in existence? Look here to the text. In and by § 6, it is provided, that "the six Commissioners may be

* "From the decision of the Lord Chancellor in cases of bankruptcy, there is no appeal." — *Archbold on Bankruptcy*, p. 21, 2d edition, anno 1827.

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formed into two Subdivision Courts;" and this provision stands *before* that by which authority is given to them to act *singly*. Now then, if and when of these *six* functionaries are formed *two* courts, each court with *three* of the six in it, how many will there be left to act in *single-seatedness*? And in what cases, and on what occasions, will they so act?

"The said six commissioners may be formed into two subdivision courts," says § 6 — "two subdivision courts, consisting of three commissioners for each court." Well then, these same two subdivision courts — *by whom*, at what *time* or times, in what *manner* — by means of what *written instrument* — are they to be *formed*? In regard to each of these same six commissioners, in whom shall be the determination — at what time and times he shall or may be acting in single-seatedness — at what time and times in *triple-seatedness*, in company with two, and which two of his colleagues, in a *subdivision* court?

What a source of *uncertainty* all this! — and moreover, along with and by means of the uncertainty, what a source of *corruption* and *intrigue!*

When the *assets* amount to half a million, and a single debt to a tenth or a fifth of that sum, what intriguing to get the case brought under the cognizance of this or that commissioner, foreknown to be, or, for the purpose, made to be, favourable! In the existing *three-seated*, *four-seated*, or *five-seated* judicatories, as it may be, corruption in this form can scarcely have been practicable. By the single-seatedness it may be seen how, in this case, it may be *let in*. By the single-seatedness? True: but against single-seatedness no objection is thus formed; for not without the help of the power of *choice*, left thus arbitrary, and the exercise of it thus unscrutable, as above, can corruption insinuate itself.

Note how the cloud thickens. — *Subdivision courts*: yes; subdivision is the word. By this word we are sent of course to look for the word *division*: by the sort of *court* called a *subdivision court*, for another sort of court called a *division* court; by the mention thus made of these two parts, for the *whole*, of which they are parts. Look ever so long, no such thing should we find. Even if, instead of *subdivision court*, the appellative were a *division court*, still we should be sent by it to look for the *whole* of which division had been made.

Actual division court decidedly and certainly established, none: but a sort of *potential* division court, *in nubibus*, hanging over the field, in the clouds, in the capacity of being brought into existence, is this: "The said six commissioners," says § 6, as above, "*may* be formed into two subdivision courts, consisting of three commissioners for each court." Now then, for and during any length of time whatsoever, suppose them to remain *not* thus formed: are they to remain idle? No; they constitute a court, of which no subdivision nor yet division has as yet been made, nor perhaps may ever be made: here then we have our lost sheep — the *division court* we were looking for. In this view of the matter, the *division* court (it should seem) is the *actual* court, to which, though only by implication, existence is given, in the first instance: *potential* courts latent — nothing more, the two *subdivision* courts; for, be the object what it may, existence it must have, before it can be divided: much more, before it can be subdivided.

Another puzzle. According to this same section 6, *two*, and no other, is the *number* of the subdivision courts, into which the six commissioners are to be "formed." But now comes the very next section (§ 7) by which they are made *formable* into a court or courts containing respectively any *other* number not greater than six. For (says the bill) "In every bankruptcy, it shall and may be lawful for any one or *more* of the said six commissioners to have, perform, and execute all the powers, duties, and authorities by any act or acts of parliament now in force vested in commissioners of bankrupt, in all respects as if . . . . . appointed . . . . . by a separate commission under the great seal."

Now for a simple amendment; which made, so far as regards the number of these functionaries, everything would be as it should be. After the words "*any one*," *dele* the words "or more;" and thereafter, after the words "*in all respects as if*," insert the word *he*, and *dele* the words, "*or any one or more of them*." Thus should we have single seatedness, with the *institution* itself in all its utility, and the *designation* of it in all its intelligibility.

Thus, moreover, would be removed the cloud raised in § 6, by the talk about "*references* or *adjournments*," and "*sickness*, or other sufficient cause;" — "references and adjournments," which are to be made by a single commissioner, "unless" he, the maker thereof, "shall think fit otherwise to direct." Yes, in the very act of doing the thing in one way, the man who is doing it is to "*direct*" — whom? — himself, or somebody else, not mentioned — somebody else (guess who!) to do it in a different way.

At Westminster school, some three or four and seventy years ago, I remember we used to be taught to make in Latin certain so-called *nonsense* verses, as a preparatory exercise for enabling us, one day, to make verses that should wear the appearance of sense. In the present instance, it looks as if the noble and learned schoolmaster, having in the course of his studies on education heard of this, was sending *himself* abroad to learn,

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by exercising himself in the art of making nonsense *laws*, how, one day, in God's own good time, to make *sense laws*.

But here the examination of this exercise must end, or at least pause: for, if continued to the end of the bill in the same strain, such is the length of the exercise, that a volume — who can say of what size? — might be occupied by the examination of it.

Now for an argument, which is nothing to the purpose: — "By the abolition of these seventy commissionerships, I lose so much patronage: for, of the patronage substituted, the *value* is not so great as of that which I give up."

Answers, these: — 1. If you did your duty, the patronage would not be *worth* anything to you. If you did your duty, you would, in the instance of each situation, fill it with that man who, in your judgment, was most fit for it: and, against that man's being most fit for it, by whose filling it you would *get* anything, the chances are as infinity to one.

2. Supposing, however, that the situations in question are *money's worth* to you, and that, for indemnifying you for the loss of this money's worth, you ought to receive a compensation, *patronage* is not the shape in which it ought to be given to you: the shape should be — that of an equivalent addition made to the *salary* attached to the office. Why this shape? *Answer:* Because, in addition to the evil produced by the institution of these worse than useless offices, — so far as regards *emolument*, to put you in possession of a quantity of *emolument* to a given amount, will cost the public more, if given in the *patronage shape*, than it will if given in the *official-salary shape*.

3. As to *patronage*, under the generally established system, taken as it is, so far from affording a security *against* unfitness, it operates as a security *for* unfitness: for, be the object of the patron's bounty who he may, the less fit he is for providing subsistence for himself in and by any other profit-seeking occupation, the more pressing is the need he has of the relief that would be afforded him by the official situation, whatever it be.

4. But, not content with the *profit* of *interestedness*, nothing will serve you, but you must have the *praise* of *disinterestedness*. Would you deserve it? Every penny, then, must you give up, of this useless — this so much worse than useless — patronage. This praise of disinterestedness, what is it that you want it for? Only that, under favour of the delusion spread by it, you may obtain the profit of *interestedness* to the greatest amount possible.

Not that it is any opinion of mine, that you ought to be *made* to act as if you were disinterested: not that I want you to be made to *lose* any part of the emolument lawfully and honestly attached to the situation to which you have given your acceptance. It would be against a fixed principle of mine — the disappointment-*preventing*, or (as far as prevention is impracticable) -*minimizing* principle: — that all-comforting principle — first-born of the *greatest-happiness* principle: — that principle which affords the only reason (nor can there be a more substantial one) for securing to every man his *own*, whatever it may be — black men and white men, in a state of slavery, excepted.

Now as to expense to *suitors*. To this topic reference was made, in speaking of the expense to the public. Alas, poor suitors! correspondent to the disinterestedness of the noble and learned arbiter of your fate, is the tenderness of the mercies, to which, on this occasion, you are consigned.

Within the all-enveloping cover of the rule-and-order-making power, which you have seen, is concealed the power of plunderage without stint: nothing legislated upon; accordingly, everything *left* to be legislated upon: and whether, by a noble and learned person, whose relish for fees has been so conspicuously self-declared, any labour or ingenuity, which can contribute to convey to the watering mouths a treat so delicious, is likely to be left unemployed, is a question, the answer to which may be left to any person whose patience has carried him thus far in the perusal of these pages.

Pre-eminently delightful to the eyes of a learned lord or gentleman is the case, where, within his grasp, there exists already a *fund* to draw upon. In this predicament are in general the cases, by which the forty millions of pounds, or thereabouts, now in the court of *chancery*, have been placed in it. When the hands in which is lodged the money composing the remuneration for the labours and merits of learned lords and gentlemen, official and professional, are those of *trustees* — persons to whom no part of it is understood to belong, — in this state of things, at parting with it, no such pang is, generally speaking, felt, as is felt by those in whose case the money taken out of their pockets is their own: always excepted the case, in so far as it has place, where the trustee, out of the money placed in his hands for the benefit of others, makes money for himself. At each fee, under the name of *costs*, pumped out of him, a party or proprietor of the money does feel a pang, and, as ruin approaches, may at every stroke of the pump give a squeak: the *fund* has no feeling, and takes it all in patience.

In an ordinary case, — not a farthing, but in the shape of a *fee*, is capable of producing a *denial of justice:* and such has been the effect of it, in every instance in which the

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farthing has been unobtainable: and such it has been, in the instance of every man, from whom, by the machinery of what is called *justice*, the uttermost farthing has been extracted.

In an ordinary case, — though one of the parties is always in a state of *sufferance*, another may be in a state of *enjoyment:* and in this state is every man, who, by the ever-ready and never-failing assistance of learned lords and gentlemen, official and professional, keeps the money of another in his hands. But, in a case of bankruptcy, all parties, on both sides, are in a state of sufferance and affliction. In Bankruptcy court, accordingly, learned lords and learned gentlemen have, for their accommodation, this agreeable circumstance, namely, that from this part of the field of plunderage, no cry of *denial of justice* is wont to issue.

Out of this so convenient tank, how many *horse-power* is that of the pump, which the learned lord so skilled in *hydraulics*, will, on this occasion, put to use? To his own discretion has everything of this sort been left by him. But, eyes there are which are upon him, as he will see: and, to such objects, the eyes of succeeding honourable gentlemen are not likely to be quite so stone-blind, as at all times have been those of all their predecessors.

Now then for the fees which are provided by this act; that is to say, by the act passed by the Lords alone, and in a part thereof, of which the representatives of the people have not as yet (October 7) been allowed to see anything.

§ 41. For a *fiat*, in lieu of a commission of bankrupts, to the Lord Chancellor's secretary of bankrupts, £10. Quære, *by* whom this money is to be paid? this is not mentioned.

§ 42. Fees to be paid — Quære, for what? — nor is *this* mentioned, — £15.

Person *by* whom it is to be paid, the official assignee: *time*, "immediately after the choice of assignees by the creditors . . . . . out of the *first* monies which shall come into his hands." Quære, how are they to be *got* into them? Person *to* whom it is to be paid, the Accountant-General. Money taken out of the pockets of those afflicted persons for a *commencement*, and to a *certainty*, £25.

Now for other sums, *not* certain, nor *ascertainable*, which, by this their said Lordships' bill, are destined to be taken out of those same pockets. First comes the sum of *one pound*. And for what, and how many times to be repeated? Answer who can: I, who am copying it, am utterly unable. The clause follows in these words: —

1. "For *any* sitting of the court of bankruptcy, or of any *division judge** or commissioner thereof, [other than the sitting at which *any* person may be adjudged a bankrupt,]

2. "or *any* sitting for the choice of assignees,

3. "or *any* sitting for receiving proofs of debt prior to such choice,

4. "or *any* sitting at which such bankrupt shall pass his or her examination,

5. "or *any* sitting at which *any* dividend shall be declared,

6. "or any sitting at which the bankrupt's certificate shall be signed by the commissioners."

Doubts pour in here in torrents. The *one pound*, — is it, during the *whole* of the proceeding in the case of the bankrupt in question, to be paid *once*, and once *only*? — or is it to be repeated? The *figures* are here inserted for the purpose of expressing the *number* of the *times* at which, according to my conception, it was intended to be repeated.

Then, as to the word *other*? The brackets, here inserted, show how *far*, according to my conception, the *application* of it was meant to be carried; but, there is nothing that I can see, that can prevent its being carried on to the end; namely, to the end of the clause here distinguished by figure 6.

Then, as to the application and import of this important word *any*. The requisition made by it, — will it be *satisfied* by *one* pound, *once* paid; namely, for the *sitting*, which, for the purpose in question, is, on each occasion mentioned? — or, on each such occasion, is it to be *multiplied* by the *number* of the sittings? On this last interpretation the *meaning*, at any rate the *effect*, of the word *any*, is the same as that of the word *every*.†

The stock of uncertainty and unintelligibility afforded by this same 42d section is not yet exhausted. For, here comes a mass of self-contradicting nonsense, a parallel to which could scarcely be found, even in the whole statute book. In line 14 of this section stand the words that have been seen, to wit, "or *any* sitting at which *any* dividend shall be declared:" hereupon, in the very next line but one — namely, in line 16, — come these words — to wit, "and for *every such* sitting at which a dividend shall be declared, the sum of three pounds." Now for a lesson in arithmetic. To

* Note here, a *Division* judge: an animal coming forth in the way of equivocal generation. See, as to this, what is said under the name of a division judge — no such person is in any other part of the Lords' bill named.

† For several years past, I have occasionally been occupied on a work to be intituled *Nomography;* in which, amongst other things, what depends upon me is doing, towards shutting the door against such doubts, and the ruin with which they are pregnant: — doubts, raised by the tenor of acts of parliament, and other written instruments, by which everything that is dear to man is disposed of.

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the *any one* pound, add *every three pounds;* what will the *sum* be?

Nonsensical as it is, here at any rate may be seen *one* conclusion that may be deduced from it, and is incontrovertibly warranted by it. Here, then, for the purpose of giving increase to money poured into lawyers' pockets, increase is given to expense — to *factitious* expense; and, for the purpose of this increase, increase given to *delay* likewise: so many sittings at each of which a dividend is declared, so many three pound fees. For this service rendered to the profession, at the expense of the afflicted, a premium offered to all those in whose power it is to earn it: this, in performance of the promise made in § 1 — "that the rights . . . . . be enforced with as little expense, delay, and uncertainty as possible."

So much for these same *fees* and the *pockets* out of which they are to be pumped. But now what is it that is to be done with them? Short answer: Given to the noble and learned author of this bill, to do with them what the Duke of Newcastle claims a right to do with his own; that is to say, what he pleases. For the long answer see Lords' bill, section 41. *Person to whom* they are to be paid, "the Lord Chancellor's secretary of bankrupts — . . . . . paid . . . . to a separate account, to be entitled, the Secretary of Bankrupts' Account:" and "all monies to be paid into the said account shall be subject to such general orders touching the payment in, investment, accounting for, and payment out of such monies, for the purpose hereinafter provided, as the Lord Chancellor shall think fit to prescribe." There ends this 41st section.

By this provision, an instrument to the consideration of which the mind is unavoidably led is that, over which, when, into a certain court, money is to be paid, the money (it has been said) is told. The instrument is a *gridiron:* and the court is the *court of Exchequer:* meaning the court called the *Receipt of the Exchequer*. For the telling of these monies, what is it that his Lordship "may think fit to prescribe?" *Animate* instrument — animated by the £1200 a-year — *animate* instrument, part and parcel of his *live* stock, his above-mentioned secretary: this is already "*settled;*" but the *inanimate* instrument — part and parcel of his *dead* stock — this remains to be *settled*.

The *gridiron*, if that be the species of instrument employed for the business of this *tellership* — what shall the individual instrument be? Shall it be the one kept, as above, in the Exchequer, and from thence borrowed? or shall it be a bran new instrument kept for the purpose in the court of bankruptcy, under the care of the said Lord Chancellor's said secretary of bankrupts?—in which case, with the help of a little improvement, *à la mode de Brougham*, it might moreover be made to serve for the telling of the forty millions which in some way or other are already at his Lordship's disposal: and, in the mean time, till a proper gridiron can be made, might not that gridiron be borrowed, which, had he not forgotten it, a prophet of these days was to have broiled himself upon, and which cannot but remain clean as a penny, not having been put to its destined or any other known use?

But now as to Mr. Secretary — "the Lord Chancellor's Secretary of Bankrupts" — I know not whether I have not his secretaryship's pardon to beg. Somewhere before this (so I cannot but suspect) I spoke of him as having nothing to do. It seems now to me that he has a great deal to do — he has all this money — this mass of money to an unknown amount — which he is continually to be receiving, and which is by him to be paid "once a-week or oftener" (for the learned stomach cannot stay long,) "as the Lord Chancellor shall think fit to direct" . . . . "to a separate account to be entitled 'the Secretary of Bankrupts' Account.'"

What I have humbly proposed, as above, is, that of all the above-mentioned fees (of the receiving and disposing of which the sole occupation of his secretaryship seems to consist) not *one* should be torn from the afflicted persons interested: and should this my humble proposal be acceded to, this occupation of his secretaryship — this his *sole* occupation — would be gone.

Before parting with his secretaryship, one more curious circumstance in relation to him I cannot forbear noticing. Under what title is it that his £1200 a-year is thus given to him? Is it under the title of Secretary to the court of *Bankrupts*? No: but under the title of "the *Lord Chancellor's* Secretary of Bankrupts." But by this same bill, the court in which the Lord Chancellor at present takes cognizance of bankruptcy business, is suppressed, and the business of it transferred to that same bankruptcy court. He is therefore (as it should seem) a sort of amphibious animal, living in two *media* at once: and, in despite of a maxim of holy writ and common sense, serving two masters.

Before this topic of expense — expense by fees extorted from the already afflicted suitors — is dismissed, note well one circumstance, by which, were it the only one, the sort of feeling this measure was brought forth by and all along nursed, would be instructively indicated. Of the *stock*, or say *fund*, out of which these fees are to be drawn — namely, the aggregate amount of the assets got in by the assignees — what is the magnitude? *Answer:* A magnitude so variable, that while in some instances it has amounted to half a million or more, in others it has been

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so small, that the fees thus destined to be extorted, would absorb the whole of it. Behold here how, by men in power, their fellow-men are operated upon and worked at as if they were deal boards: the *money* thought of — that, and nothing else: by men, themselves without feeling (without feeling for other men,) their fellow-men dealt with and operated upon as if *they* had none. Who shall say in how many instances (if this bill of the Lord Chancellor's passes into a law,) in how many instances the whole of the bankrupt debtor's property, instead of being divided among his creditors, will be snatched from them and put into the pockets of the said Lord Chancellor's creatures.

But all this about the *fund* for fees is but a digression. It is high time to return. Speaking of the House of Commons' bill, "everything, I said, is there left to be legislated upon." To be legislated upon? and by whom? By whom but the noble and learned author of the bill. And, *how* and *where* does this appear? *Answer:* In the bill printed by order of the House of Lords.

Yes: to that instrument, which is the expression of the will of the House of Lords, and of the House of Lords alone — to that instrument have I been obliged to resort, that being the only instrument in which it is declared *how* it is, and by *whom*, that the money which belongs to the afflicted — to the insolvent debtors and their creditors — is to be disposed of.

Into two parcels is divided the money to be drawn from this so pre-eminently scanty source. Parcel the first — "fees .... such (says the bill, § 40) as are provided by this act:" Parcel the second — such (it continues) as are "set forth in any schedule of fees to be settled and allowed from time to time by the said Court of Review, with the approbation of the Lord Chancellor, and to be certified by them to both Houses of Parliament." Mark well — "settled and allowed by the said *Court of Review*, with the approbation of the *Lord Chancellor*." Of this presently.

Settled and allowed? And how settled and allowed? On the present occasion, in this § 40 of the Lords' bill, this is not said. What *is* here settled is, by whom? By this we are sent upon the look-out to see how it is — that is to say, by instruments how denominated, — by these conjunct authorities other matters are settled. Turning to § 2, we find that what is there appointed to be done is to be done by "rules and regulations" to be made in pursuance thereof.

We are thus brought to these same *rules and regulations*, on which occasion I venture to assume, that the sort of instruments thus denominated, are meant to be the same with those which, in § 11, are denominated "*rules and orders*" for regulating the practice of the court of bankruptcy, and in § 22, by the word *rules;* though in this case without the word *regulations* or the word *orders*. Be they called what they may, now comes the question — by what *authority* are they to be made? *Answer:* On different occasions, by two different authorities: namely, on the one occasion (by § 11,) by the Court of Review, with the consent of the Lord Chancellor; on the other occasion (by § 22,) by the Chief and other Judges, "with the consent of the Lord Chancellor." On the first of these two occasions, the subject-matter of regulation is unlimited, and all-comprehensive: in the other it is limited — confined to the nomination of official assignees.

Now for the difference between the two authorities; and the final cause of that same difference. The court of bankruptcy is the authority by which these same all-comprehensive *rules and regulations*, or say *rules and orders*, are to be made? Oh no: but the court of *review*. And why *not* by the court of bankruptcy? and why by the court of review? Why not by all four judges? — why by no more than three of them? and those three the three *puisnes*, styled by the somewhat whimsical title of "*other judges?*" Perfectly intelligible when once mentioned, though somewhat recondite reason, this: — namely, that by this means, with the convenience and benefit of *secresy* of procedure, of which presently, the noble and learned author of this bill might be enabled to savour the sweets of arbitrary power.

Not by the court of bankruptcy are these rules and regulations to be made, but by the court of review. And why *not* by the court of bankruptcy? *Answer:* Because, that in the court of bankruptcy there must be four judges — namely, "the chief judge and the three other judges." And why by the court of review? *Answer:* Because (as per § 2) the said judges, or any three of them, shall and may form a court of review: *any* three of them; which *three* may, therefore, be the three puisnes.

Is it, then, for no reason, that on this occasion, when *rules and regulations*, or say *rules and orders*, are to be made, the chief judge is so carefully left out? Oh no: it was for a very important reason: it was to secure obsequiousness, and under and by virtue of such obsequiousness, with secresy, as above, for a common cloak (wrap-rascal — *absit verbo invidia* — was, at one time, the name of a a species of large cloak,) to secure to his own noble and learned self, as above announced, the delight of savouring the sweets of arbitrary power (not forgetting fees.) The judge, who is thus left out, has no higher seat to look to: the three judges who are taken in, have each of them that same higher seat to look to; they are each of them in the case of a bishop

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of Gloucester or Oxford, with Canterbury and York in view; not to speak of those bishoprics, such as London and Winchester, which are also blessed with an extra portion of that mammon by which the gates of heaven are shut against the possessor.

To speak more particularly and plainly (for I wish to be understood:) in the three possessors of the £2000 a-year each, he beheld so many aspirants to the situation which affords £3000 a-year. A thousand a-year, though it be but in expectancy, being thus part and parcel of the premium for obsequiousness, for being, on all material occasions, (according to the so constantly pronounced formulary) "*of the same opinion*" *subintellecto* with my Lord Chancellor, — *rebus sic stantibus*, on any such material occasion, for the purpose of any practical conclusion and operation, can the existence of identity of opinion be regarded as exposed to doubts?

For producing this same identity, on different occasions, different instruments have the approbation of this our legislator: in the case of twelve men, who, be they what they may, are rendered infallible by being put into a box, the instrument, in addition to the box, is *torture*. in the case of the three men termed "*other judges*," who must have eaten a hundred dinners in one or other of four great halls, and remained alive at least ten years after the last of those same hundred dinners. The instrument is £1000 a-year in expectancy: the £1000 a-year hanging in the air before the eyes of their respective minds, as does the New Jerusalem in the eyes of certain believers. In this latter case, the instrument is not in its nature quite so cogent as in the former case, but it is sufficiently effective for all practical purposes, and is to all parties a much more pleasant one.

Nor let it be forgotten, how variable are the members of the body, by whom, on different occasions, the several sets of rules and regulations, or say rules and orders, may be made, nor in what a degree on his Lordship's will and pleasure the composition of this same body has been made by him, on each such occasion, to depend. They may be made (these rules and regulations) on one occasion, one set of them, by the said three *other judges;* on another occasion, by any such two of them as it may please his Lordship to choose, with the addition of the chief judge. On ordinary occasions, this will of course, for the reasons above mentioned, be the said three "other judges:" but on this or that extraordinary occasion, a case that may happen is — that of the three, one having disappointed expectation, and being on terms more or less rebellious with his creator, may run rusty, while the chief of the four creatures continues to be everything that can be desired.

Had his Lordship given to these his three *puisnes* the power of thus legislating by themselves, he would have had no pretence for having, on this all-comprehensive occasion, anything to do with them. Had he taken the power to himself *alone*, the disposition would have been too glaring, still more revolting, altogether in the teeth of *precedent*, and completely exposed to responsibility. Wrapping them up in the same cloak with himself, and that a cloak of *secresy*, he metamorphosed his *mace* into a *wand*, and the court of review into the den of Cacus.

And here, peradventure, in addition to the £6000 a-year *patronage*, may be seen a *reason*, in a certain sense, for the adding the three as much worse than needless and useless, and, in respect of number unprecedented, judges, to the one needful and exclusively customary one.

I have said, — in the teeth of precedent. For, not more filthy in the teeth of *reason* is the arrangement than in those of *precedent*: for, in what instance, on the occasion of the power exercised by the making *rules and orders* (as the phrase is) have the judges of any one of the courts called *superior courts*, found themselves under the necessity of obtaining the consent of any authority superordinate to their own? and in particular, to that which stands next above them?

The *bag* is now cut: and the *cat* — has she not been let out of it?

Now for a most curious mess of muddle-headedness. To save the brains of the reader from the rack, before the *riddle* I feel it necessary to put the solution: it is *this:* — In the draughtsman's conception, the idea of the species of judge called a *commissioner*, is confounded with the idea of the entire of this newly-to-be-engrafted branch of the judiciary establishment — it is confounded with the idea of the *whole*, of which this same commissioner is a part. So much for the solution. Now for the riddle.

In § 38 of the *Commons'* bill, behold how the commisioners are spoken of as being members of the court of bankruptcy, as well as the judges. "And be it enacted," says the bill, "that the said judges and commissioners of the said court of bankruptcy shall, in all matters within their respective jurisdictions, have power to" do so and so. Had it stood as follows, that is to say, *The said judges of the court of bankruptcy, and the said commissioners, shall*, &c., the absurdity and confusion would not have had place. Was this a slip of the pen, an oversight of the clerk, or an error of the press?

To one or other of these causes it would, of course, have been to be ascribed, if with no more than the ordinary degree of inaptitude the bill had been penned. But in a bill, in which proofs of such never-till-now-exemplified inaptitude are so abundant, no ab-

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surdity can be too gross to be ascribed to the penner or penners of it.*

So much for the solution. Now for the riddle. This same court of bankruptcy, — who are to be the members of it? "The chief judge, and three other judges," says § 1; and this, so far as it goes, is perfectly intelligible. But in the Lords' bill, § 42, mention is made of a judge under the name of a *division judge*. Now, then, who is this same division judge? — what is the court in which he is to sit? — where is the *bench* on which he is to sit? None does the Lords' bill, by whom he is created, mention: *air* — thin air — or a *vacuum* — a still thinner *substratum* — is the seat on which his sitting-part will have to rest. However, as he himself is but a fictitious entity,† not very severe (it is hoped) will be the suffering produced by the want of it.

When speaking of *courts*, — that of the two halves, — the subdivision courts, — the bill gives us no *integer*, no such *court* as a *division* court, having been instituted or mentioned by it, has been already noticed (see p. 569.) In this same 42d section, however, we have this same division *judge*.

Be he who he may, in his character of English judge, he will be a harpy, — and, being so a harpy, in addition to his wig and furred gown, he will have *wings;* with these wings he may keep fluttering over the court in which the chief judge and three "other judges" are sitting, waiting to receive, at the hands of his noble and learned creator, his existence: talking theology to the other *inclusas animas superumque ad lumen ituras*, of whom Virgil singeth. One day, let us hope, — one day, in his noble and learned creator's own good time, we shall know who he is: — he will appear to us in the flesh: — some individual composed of flesh and blood, with two feet, and (save and except harpy's feathers as above,) without feathers, we shall see, and hear, answering to the name of *Mr. Division Judge*. Shall he, for example, be Mr. Solicitor-General, by whom the said bill is admired so sincerely, defended so stoutly, and understood so perfectly?

In the *first* edition of the Commons' bill, his Division-judgeship *does not* make his appearance. But in the second edition of that bill, which in so many points is so different from the first, he *does:* and in this second edition, the number of *this* section is not, as in the Lords' bill, 42, but 48: so that, on maturer thoughts, this same division judge, in his above-mentioned state of imaginary, or say potential existence, the honourable and learned recommitters of the bill, — who, as above observed, understand manufacturing a bill of twenty-two folio pages, as the phrase is, *in no time* (Mr. Attorney-General, shall we say? and Mr. Solicitor-General — the chosen of the noble and learned creator?) — yes, in their maturer thoughts, this same division judge, though nothing upon earth do they give him to do, they are determined to have.

So much for the *division judge*, in § 42 of the Lords' bill, and in 48 of the Commons' bill, second edition, mentioned. Now for the commissioners, in those same places mentioned. The court of bankruptcy having been mentioned, what is the style and title given to him? *Answer: Commissioner thereof:* the court of bankruptcy being the last *antecedent*. Now, in what sense or senses, if commissioner thereof, is it possible he should be so? Two only, say I: namely, that of *member* thereof, and that of person *commissioned* thereby: which latter sense, by the bye, is but a strained one. Let any man produce to me a *third* sense that will bear examining, — *erit mihi magnus Apollo*.

Lastly, this same word *or*, by which, in its quality of *conjunction copulative*, the *division judge* and the *commissioner* are coupled together, in which of two senses is it to be understood? that which is called the *disjunctive*, or that which is called the *subdisjunctive*? If the *disjunctive*, then are there *two* sorts of these functionaries meant; if the *subdisjunctive*, then one only; these two names being each of them a name, by which that one person is denominated. In this latter case, instead of *or*, *I* should have written *or say*.

In a word, unless otherwise provided for, he would die of inanition; in which case, peace be to his manes! How then shall he be provided for? He must be metamorphosed into the sort of harpy called a sinecurist.

Now then, were it not for the solution given at the outset, — of everything, which, in the Commons' bill, first edition, is said of these same commissioners, what would be the result? *Answer:* That, severally and collectively, these same commissioners, six in number, *are* and *are not members* of the court of bankruptcy, in such its quality, and in its quality of a court of review: and

* 13th October 1831. Looking at the *second* edition of the Commons' bill, I find this same 38th section reprinted in it *in terminis;* and, in this second edition, the section is the 38th, as in the *first*. In the Honourable House votes of the 11th — 12th October, I read these words: "22. Bankruptcy court bill. Order for further considering report read; *bill re-committed*," &c. At the same time, at about 10 A.M. of the 12th, along with this same paper of votes, came in the above-mentioned second edition of this bill, ready printed: and this same second edition is, in a multitude of particulars, quite different from the first, over and above those of the sections which it has reprinted from the Lords' bill.

† *Ens rationis* — the technical logical denomination — he must not be called by: lest, by this appellation, intimation should be understood to be conveyed, of his being the offspring of *reason*, instead of his being, as he is, offspring of the want of it.

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that they *have*, and have *not*, a *right* to *sit* in it.

Another curious operation to perform, and which, were there time for it, should on this present occasion be performed, is the determining in what cases the several commissioners, six in number, are authorized, each of them, to act singly, and in what other cases one is indeed authorized to act, but no otherwise than in conjunction with another fellow-commissioner, or two others, or others in some number greater than two. For the present, this operation must be dismissed: but, of this state of things, enough is said already to constitute a ground for the following practical conclusion, which, in the form of a question, will be deduced from it.

Comes accordingly the question, which, to the noble and learned author of this bill, presents itself for an answer. According to a position laid down in that speech of yours made from the bench, on declaring your resolution to swallow up your Vice-Chancellor and the Master of the Rolls, many-seatedness, and in particular triple-seatedness, is preferable to single-seatedness, in judicature: and accordingly, now, on the occasion of the instituting of a swarm of judicatories for taking cognizance of the bankruptcy business, for no other advantage than what you expect from the superior aptitude of many-seatedness in the case of the superior court, for no other advantage is it that you *quadruple* the expense: while, in the case of the court below it — in the case of the court of immediate jurisdiction in which all the business will be *begun*, and (so let us hope at least) by far the greatest part of it *ended*, you employ many-seatedness and single-seatedness promiscuously, as if, in regard to aptitude of judges, and consequent effect upon the rights and welfare of suitors, there was no difference.

If not promiscuously, but with distinction, — then, of the distinction which you make — giving the jurisdiction as you do, in some cases to the *one*, in other cases to the *two*, the *three*, the *four*, the *five* — what is the ground?

Now for a mass of entanglement — a very *plica Polonica*. Look to the court of review! look at its functions! What are they? Entangled in a most curious manner with those of every other in the cluster of five courts: — with those of the court of bankruptcy its superior, with those of its subordinate, the *division court* (supposing it to have existence) — with those of the two subdivision courts — with those of a commissioner acting singly — with those of the commissioners acting in courts composed of any number of them not exceeding the six — with those of the Lord Chancellor — and with those of the House of Lords. This same *plica Polonica* — what hand shall disentangle and unravel it? Answer this question who can: one sad answer may, and with but too well-grounded confidence, be made; namely, that by every touch of the comb, will be made to flow the blood of afflicted patients.

In the first edition of the Commons' bill, the sections in which this same court of review is mentioned, are § 2, 3, 7, 9, 10, 11, 17, 21, 30, 32, 34, 35, 36, 37. Before these pages are at an end, I may perhaps print, one after another, the several clauses, in which mention of this same court of review is made. Meantime let it be noticed, that of all these sections it is in the last — it is in the 37th of the first edition of the Commons' bill, that a finish is put to that unintelligibility, by which this bill may be seen so pre-eminently distinguished, from and above everything that ever went before it.

Secresy! — secresy in judicature! To this subject, and the anxiety betrayed by the noble and learned author of this bill, to envelope his own proceedings, and the proceedings of these his new judicatories, allusion has already been made, and explanation promised: for this explanation the time is now come.

Secresy! — secresy! — secresy in judicature, and to an *unlimited extent*, sought to be established by law, established in an act of parliament, now when reform of parliament is the order of the day! Am I awake? — can this be? Yes: here is the passage: and it is in this same § 7, and forms a tail to it, — not being of importance sufficient to form a section of itself: — "And the said subdivision courts may sit either in *public* or *private*, as they shall see fit, unless where it shall be otherwise provided by this act, or by the rules to be made as hereinafter mentioned."

If, as hereinafter proposed, the two subdivision courts were blown away, this abomination, this practice and power copied from the Holy Inquisition court, would therefore be blown away along with it: for, on no one of these same six commissioners acting singly, is this power of unbridled maleficence conferred.

But no! these are not the only hands in which this right of doing wrong is lodged. So early as in the second section, it is established, and lodged in the hands of the four judges of the court of bankruptcy, or any three of them acting under the title of a court of review; "which," says § 2, "shall *always* sit in public, *save* and *except* as may be otherwise directed by this act, or by the rules and *regulations* to be made in pursuance hereof." Now, as to any direction to a *different* effect, no such direction is there in the act; but, as to direction to this *same* effect, an instance has, as above mentioned, just presented itself to my astonished eyes.

Secresy thus endeavoured to be made to envelope in its baneful covering *this* part of the field of judicial procedure! and *this* part

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that, in which, if not above *all*, at any rate above *most* others, the benefit of the light spread over it by *publicity* is greatest. "By publicity, (it has been said*) the temple of justice adds to its other functions that of a school: a school of the highest order, where the most important branches of morality are enforced by the most impressive means: a theatre, in which the sports of the imagination give place to the more interesting exhibitions of real life. Sent thither by the self-regarding motive of curiosity, men imbibe, without intending it, and without being aware of it, a disposition to be influenced, more or less, by the social and tutelary motive, the love of justice. Without effort on their own parts, without effort and without merit on the part of their respective governments, they learn the chief part of what little they are permitted to learn (for the obligation of physical impossibility is still more irresistible than that of legal prohibition) of the state of the laws on which their fate depends.

No other subject-matter (the observation has been made to me, and it is my expectation that I shall find reason for acceding to it) no other subject-matter of judicial procedure is there, from attendance at which, to numbers of men in so large a proportion, information and warnings so useful might be derived: frauds, for example, of which premeditated bankruptcy has been the instrument — imprudences, by which, step by step, in the road of prodigality, men have been led to insolvency. As to the sittings of commissioners under the existing practice, they are public and open in appearance; but for the purpose of any such information as *that*, closed in effect: such is the hubbub and confusion; — the same commissioners acting in two or three commissions alternately, in the same minute.

Of all other judicial proceedings of any importance, reports are published: published — not only in books, but in newspapers: of these proceedings, in which money, by hundreds of thousands, is disposed of, scarce ever is any account visible or accessible.

True it is, that under the existing practice, at the commencement of the proceedings, a *meeting* — that is to say, of the *commissioners*, — a meeting, to which the name of *private* is given, has place: and at this stage of the proceedings, *meetings*, in the *plural*, is the word sometimes employed. But, this stage *passed*, there ends everything *private*, whatsoever was meant by the word.

Now, of this same privacy, what is the need or use? To this question, in no one of the works on the subject of bankruptcy, have I been able to find an answer. Is it, lest, were the proceedings public, from the affirmation made of the debt, the reputation of a solvent trader should receive injury? — is it, lest an insolvent, and about to be, and properly, declared bankrupt, should withdraw his person, or more or less of his property, out of the reach of the power of the court? Into the propriety of any such alleged justification, the present occasion does not call upon me to inquire. Sufficient is it to observe, that, under the existing practice, at this stage of the proceedings, whatsoever be the meaning or end in view of it, the privacy is at an end: after it come the meetings, to which is given the denomination of *public* meetings: and the one only judicatory, in which, by law or practice, authorization is given to *privacy* of procedure, is that of the commissioners, of whom there are either three, four, or five, — never fewer than three, — whereas by this bill, authorization is given to the sittings, as well of the four or three bankruptcy court judges, as to those of the commissioners, when (as per § 6) "*formed*" into their two subdivision courts.

Well: but this same Lord Brougham and Vaux that now is — this Henry Brougham that so lately was — and who at that time was among the best-tempered and best-humoured of mankind — can you lay your hand upon your heart, and deliberately pronounce him determined upon the exercise of acts of secret tyranny and cruelty — the most maleficent of all the deeds of darkness? Oh no! no deliberate plan of tyranny; no hardness of heart; only a little giddiness of head, such as a sudden elevation is so apt to produce. "Father, forgive them! for they know not what they do." Who has not heard of this heavenly prayer? and who, that has any remembrance of what Henry Brougham so lately was, could be so hard-hearted as to wish to deprive him of the benefit of it?

Not but that it does appear, that at the bottom of all this secresy, in which he was thus putting it into his power to envelope the proceedings, there was some sinister design, and, in particular, some *fee-gathering* design, for assuaging his hunger and thirst after — what shall we say? — not *righteousness*, but the mammon of *unrighteousness*; either this or else, that while penning these two sections, in the second of which he returns to the charge and care of secresy, he was thinking either of nothing at all, or of something which was nothing to the purpose: for example — London Universities — uncommunicated, or useless, under the nature of useful knowledge, — or hydrostatics, — or some theorem or problem of pure mathematics, for the instruction of the Royal Society; or, lastly, that, not caring to be at the trouble of so wearisome a job, as that of penning a paulo-

* *Rationale of Evidence*, B. II. Ch. X. *Publicity and Privacy*, &c.

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post future act of the legislature, on the composition of which millions of money, and the fate of tens of thousands of men, women, and children, would every year have to depend,—he shot down the load upon the back of this or that one of his dependents, who was seen to be in possession of a pair of shoulders, but by accident happened not to have a head upon them.

Ah ministers! ministers! deep may be your regret, when you come to learn what the people think of you, for having, at such a price as the forcing through of this job, purchased the support of this one "indiscriminate defender of right and wrong," by the indiscriminate utterance of truth and falsehood. Had he been left where you took him from, you would have had less amusement given you by personalities; but, by how much less would have been the majority against you in the House of Lords? Some of you — I know not how many of you — have (while writing this I hear) felt this same regret. I forgive you: may the people forgive you! Yes: but on no other condition, than that of your throwing Jonas overboard, or making him into a scapegoat, and sacrificing on the altar of justice, him by whom justice herself is endeavoured to be sacrificed — sacrificed to his own sinister interest.

The country kept thus long in a ferment — and for what? For no better a cause than the forcing through parliament this one job!

And you (says somebody to me)—and you, who are thus crying out against secresy — in your proposed codes, are there no instances in which you authorize it? Oh yes; instances there are to be sure: but in no instance is any such authorization given without special *reasons:* and few and narrow indeed are those instances; nor any one is there, in which the secresy has not its limits in respect of *time;* and *that* in such sort, that in no instance can the secresy be applied to any abusive purpose, but that the abuse will, sooner or later, be brought to light, and the authors subjected to condign punishment.

In every judicatory, of whatever, by any person concerned, is said or done in relation to the business, minutes will be taken, word for word, as in select committee of the House of Commons.

Now for the proposed AMENDMENTS. To give them *in terminis*, and with application made to the text, would occupy more time and space than the exigency admits of.

For conveying a general conception of them, the following short heads may serve: —

1. Strike out all the superfluous situations; namely, in the court of bankruptcy, those of the three puisne judges — and those of the secretary, with his two clerks.

2. Whatsoever be the number of the commissioners, let them all, on every occasion, act singly.

3. *Six* being the number regarded as sufficient for the whole of the business, taken at its maximum — appoint, in the first instance, some smaller number, suppose *three:* with power, to each, to appoint a *depute*,* sitting (in the same manner as his *principal!*) by himself; and, during a probationary *year*, serving thus, as it were, as an *apprentice;* and, as such, serving without pay.

Reason 1st. No man who in his own opinion is not fit, will accept the office.

Between the several deputes, *emulation* will have place: each of them being a candidate for a commissionership; so many deputes, so many rival candidates.

The commissioner principal would see it to be his interest to depute whatsoever man appeared to him to be the fittest. Why? Because the greater the fitness of the depute, the greater his chance of being appointed commissioner.

2d. By appointing a depute, so fit as to be appointed commissioner, he would thus, and with honour, exercise patronage; if not so fit as another, he would have no patronage; if conspicuously unfit, instead of patronage, his lot would be — disgrace.

Behold here the *securities* afforded for *appropriate aptitude.* Confront with them those constituted, in § 1, by *years of standing;* and in § 8, the nugatory formality of a vague generality oath.

4. For each commissioner, acting singly as above, whether principal or depute, let there be a *registrar.*

5. When a commissioner deputes a *commissioner depute*, as above, let him appoint a *registrar depute*, to act under that same commissioner depute; the registrar, in like manner, serving his probationary year *gratis.*

6. To take and keep an account of everything which is said or done in the course of the procedure, — such, in general conception, is the business of a registrar.

7. Let the appointments of the several *principals* be (as in the bill) by the *King*, but with special mention of its being at the *recommendation* of the Chancellor. The state of the case would not thus be different from what it is at present: but, by the declaration thus made of it, responsibility to public opinion would be fixed upon the Chancellor, much more strongly than at present.

8. No *fee* to be taken by any functionary, high or low, of either court, on any pretence: for every fee so received, punishment as for corruption or extortion, or both. A fee to a subordinate is still more mischievous than

* In the Scottish Judiciary Establishment *sheriffs* (judges of the shires) appoint *sheriffs-depute.* [They are called sheriffs-substitute. — *Ed.*]

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the same fee to his patron. The patron has it in his power, and the fee makes it his interest, to maximize the number of the *occasions* on which the fee shall be received; and this without being seen to do so: every fee allowed to be taken by any subordinate functionary, of whose situation the judge is patron, is a premium on the manufacture of expense by the judge: of expense, as also of delay; namely, for the purpose of magnifying the number of the *occasions* for fresh fees, and thence for increase to the expense. It is by the having given this shape to the remuneration, that the existing state of things, in respect to the judicial establishment and system of procedure, has been produced: a state of things, in and by which, to so vast a majority of the people, justice has been utterly denied; and, to all besides, sold at an extortious price.

9. Let *lot* determine the *order* in which the business, as it comes in, shall be carried before the commissioners; that is to say, which commissioners shall be the *first* to appoint a depute, which *second*, and so on. When each has thus appointed his depute, if ulterior bankruptcies remain to be taken cognizance of, let lot determine the option of appointing ulterior deputes, as before: and so *toties quoties*. On this plan, is there any danger of a superfluity? None whatever. By appointing any depute over and above, the number likely to be found needful, no commissioner would have anything to gain: were he to do so, he would discredit himself, and disoblige the depute or deputes already appointed by him.

10. As to official assignees, let one such assignee be appointed with a salary, as in the case of a commissioner, with power to appoint *deputes* as need called for them, as above: or else, for every *commissioner* principal, as above, establish an official *assignee* principal. Of these two arrangements, the former is the most simple. Each such depute should be removable, at any time, *instanter*, by each one of his three superiors; namely, his principal, any commissioner under whom he had been officiating, and the bankruptcy court judge.

Without this arrangement, prodigious would be the difficulty of determining what is the number of these trustees necessary, and thence the aggregate amount of the *pay* necessary to be given to them: as also of obviating abuse, on the occasion of the intercourse, between these functionaries chosen by the government, and the assignees chosen by the individual parties.

As to the relation and intercourse between the official assignee and the non-official assignees, this is a subject naturally loaded with no small difficulty. If either *can act* without the other, the tying them in any way together cannot have any use: if neither can act without the other, no limit can be assigned to the DELAY with which the *getting* in of the assets, and the distribution of them, may be clogged. But, by the probationary system above proposed, this difficulty will at least be much lessened, if not entirely excluded; the natural causes of delay will be brought to view, and, by the view taken of them, the natural and appropriate remedies will be suggested.

Under the system established by the bill, — of the official assignees (of whom, from the second edition of the bill, it appears there are to be thirty, with emoluments, in relation to which not a syllable in that same second edition have I been able to find out the business,) the emoluments, in so far as constituted by fees, would, of course, receive every possible extension, as occasions happened to present themselves.

Under the here-proposed system, not only to the several situations of commissioner and official assignee, but to that of Lord Chancellor also, would this check upon abuse apply itself. More conspicuously than it would be otherwise, would his reputation be at stake upon the aptitude of the choice made by him of commissioners and official assignees. By the choice made by him of commissioners, and by every choice made of an unapt deputy, a commissioner would show that in choosing him, the Lord Chancellor had made a bad choice; and so in the case of an official assignee.

Proportionable to the efficiency of the security against abuse afforded by this arrangement, would of course be the aversion to it on the part of his Lordship; for, it would narrow the arbitrariness of his Lordship's choice, and operate as a check upon the appointment of unfit and worthless dependents, flatterers, parasites, and other favourites.

A proposition, having for its end in view the *optimizing* the judicial establishment with its procedure, and maximizing the happiness of the people under it — a proposition which has for its end in view, the abolition of the sacrifice of the interest of all besides to the sinister interest of lawyers, along with that of the ruling few, — at the sound of a proposition so horrible, I behold learned and honourable gentlemen (how little less than *all* that the Honourable House contains!) all thrown into convulsions.

11. 9. Appeal, from every commissioner to the bankruptcy court judge. Jurisdiction to him, — *immediate*, none: none but this *appellate*.

12. Power to the *judge*, from time to time, to establish *rules and orders*; intimation given — that, wherever, on the face of it, the need of the rule is not plainly obvious, — *reasons*, annexed to it, are expected at his hands. No

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blockhead so stupid as not to be able to pen rules, for which no reason need be given: —while, by the thus imposed *obligation* of giving reasons, —by this obligation, though not of the sort which by jurists is called a *perfect* one, is established a test of aptitude, for the legislative function thus exercised; a test, the tendency of which is — to drive from the task all who are conscious of want of aptitude for it.

13. Power to *Lord Chancellor*, at any time to *repeal*, or say *disallow* (no matter which be the word,) any or all of the rules and orders so established. Power to him, at the same time, in relation to the subject-matter of them, to substitute new ones: on his part likewise, intimation that, in both cases, reasons are expected. Under the existing practice, be the rules and orders of a judicatory ever so mischievous, the mischief is without remedy: without remedy applicable by any hands other than those of parliament.

By this means, responsibility is fixed entire: — in the first instance, upon the bankruptcy court judge; then, after him, upon the Lord Chancellor: whereas, were they to concur in the establishment of the several rules and orders, the responsibility would be divided, and, by the division, greatly weakened, not to say destroyed.

14. All these rules and orders, as well those of the Lord Chancellor, as above, as those of the bankruptcy court judge, let them be certified to the two Houses; and by the House of Commons printed, of course, with the other papers, for the use of the members; with additional copies of the same impression to be exposed to sale.

The cheapest way would be to print, at once, under the care of the functionary by whom these same rules and orders were made, the whole number of copies necessary for the use of the members of both Houses, and for sale; one copy, authenticated by the maker's signature, being transmitted to each House; notice thereof being at the same time published *gratis* in the several newspapers.

15. As to salaries, let not any one of them commence till the business of the court in which they are to be earned has commenced; commenced, in each instance, by the actual appearance of a suitor in that same court. — Under the bill as it stands, "this act," it is said, "shall take effect from and after the passing thereof, as to the appointment of the judges and other officers hereby authorized; and as to all other matters and things, from and after the eleventh day of January next."

Gloria Patri! Glory to the noble and learned father of this bill! To secure the payment of the salaries, nothing is there that is necessary to be done for them! Under this act, let any man, whose patience has carried him through the foregoing observations, and in particular, those under the head of *uncertainty*, judge — whether the business, by which the salaries are required to be earned, would be able to stir a step, stuck so fast as it will have been seen to be, in the mire of nonsense.

16. At any rate, let the *duration* of the act be but temporary: — say three years. In the practice of parliament, a provision to this effect is, as everybody knows, in frequent use. Not many, surely, can have been the *occasions*, on which any stronger demand for it than on the present occasion, has had place.

This same principle of *probationership* — the applications made of it being, moreover, followed by choice made out of the probationers, — let it be considered how vast the extent is to which it is capable of being applied to the filling of official situations: and, in the character of a security for the maximum of appropriate aptitude, and still more, in the character of a security against the maximum of correspondent inaptitude, — let it be considered whether the beneficence of it be not correspondent to that same extent.

Proportioned to its efficiency in that character will of course be the horror inspired by it into the minds of all expected *protégés*, to whom their respective consciences present a certificate of inaptitude: *item*, into the minds of all expected *patrons*, to whom their respective consciences present a certificate of intended abuse of patronage.

In conclusion of this not as yet completed list of proposed amendments, comes now one word on the subject of four-seatedness.

Suppose the necessity of it, to the exclusion of *single-seatedness*, established as a principle, — behold the consequence. In case of single-seatedness, for a system of local judicatories embracing the whole kingdom, money enough (suppose it agreed) can be found; in case of four-seatedness, not: on this supposition, what is the consequence? That, by this artifice, accessible justice is impossibilized; factitious expense and delay, eternized. Still, as now, and so for everlasting, justice denied and sold — sold to the best bidder; for such is always the *rule* and the *result*: the largest purse is sure to carry it.*

This is the design of which I stand forth and hereby accuse the noble and learned head of the law. This is the problem, of which I accuse the noble mathematician of having proposed to himself, and, at the end of it, written Q. E. F.

* Of the existence of this state of things, a demonstration may be seen in the work intituled "*Petitions for Justice*, &c. That the abomination has swelled to this enormous pitch, and that such, as above, was the origin of it, is what, of the vast multitude of men of prime talents, whose interest it is to controvert it, not so much as one has ever yet felt himself able so to do in print, with any prospect of success.

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As yet, so general, not to say universal, is the preference given to what is old and bad, how bad soever, to what is new and good, how good soever,—so generally current, even among well-informed men, the aphorism "*too good to be practicable*," — that, the more firmly I am assured that the above proposed arrangements would, if adopted, be productive of the effects intended, and that, taking them in the mass, nothing rational can be adduced in opposition to them, — the more thoroughly am I assured, that in the existing House of Commons, reform-preaching as it is, all adoption of it is hopeless. Nor will it be less so, so long as the head of the law stands upon the shoulders upon which it stands at present.

Oh! grudge him not his pension of retreat! Oh no! anticipate it — make him a *pont d'or*, too long and too wide it cannot be — so he does but consent to pass over it.

And who then shall be his successor? Happily, of his name all mention is as needless, as to him it would be unpleasant; to him who, in nothing which on this subject has by this pen been written, has had any, the least participation, nor, perhaps, at this moment knows of the existence, or so much as of the design, of it.

Taught by Tacitus, this splendour I throw around him. Speaking of statues, "*Præfulgebant*," says the Roman historian, if I do not misrecollect him—"*præfulgebant Brutus et Cassius, eo quod non visebantur*."

Now as to *fees*. As to fees, the Lords' bill said nothing: the Commons' bill, in the first edition of it, as little: in the second edition, comes the list of fees. Why not till the *second* edition? *Answer:* Because, at the time of its being delivered in, the determination having been taken to hurry the bill through both Houses, with a precipitation in such a case altogether without example, it was seen that all examination of it would thus be rendered the more assuredly impossible.

Obscurity here, as exquisite as ever: Of these lawyers' sweetmeats — to suitors, pills so bitter — the list is divided into two schedules. *Items*, in schedule I. 10; in schedule II. 12. *Sources* from whence the precious matter is drawn — that is to say, *operations* and *written instruments*, — in eight of the twelve items of the second schedule, upon the face of them, the same as in the first. In three of those eight instances, for one and the same *operation*, the fee in the second schedule is, as above, different from what it is in the first. Of course (*reason* never having as yet been able to find its way into an act of parliament) — for no one of all these differences is any *reason* assigned: and as to the *cause*, for this also we are left to conjecture. As to the question, in which of the *five* courts instituted by the bill instead of *two*, the fees are to be paid, in schedule I. nothing is said: in schedule II. namely in item 3, mention is made of the court: it is "the court of *review:*" so likewise in item 6: in that instance, it is "a *subdivision* court." Schedule I. bears for its title these words — "*The first schedule of fees before referred to:*" — referred to? where? this is not said. The title of schedule II. is — "*The second schedule of fees before referred to:*" — where referred to, is not said. Of *this* obscurity, the cause (it is true) lies in parliamentary practice — in the shapeless shape given to bills — the shape in which *sin* appeared to Milton: division none; object of reference, accordingly, none: to the noble or honourable and learned draughtsman, or draughtsmen, all that can be justly imputed is — the advantage taken of the obscurity, and the confusion produced by it.

In this stygian darkness, one thing alone is clear: and *that* is the determination to maximize the weight of the burthen heaped upon the afflicted.

Now for proof. Of fees, in the instance of which it is the *interest* of those to whom the *power* is by this bill given, to give increase to the *number* of the *occasions* on which they are received, or to the *quantity* of the *matter* in proportion to which the amount of the fee receives increase, behold the seven examples following:—

1. In schedule I. item 4 — For every *order* on hearing, ... £1 5 0

2. In schedule II. item 4 — For every *order* pronounced by that court (namely, the court of review, as per the last preceding item,) £1 5 0

A word here, as to the instrument here denominated *order*. In these two cases, is it the same thing, or a different thing? No bad subject-matter for litiscontestation this; — that is to say, should the fee-gatherer of any one of the five courts other than the *court of review*, claim a fee to this amount, for an *order* thereof, which is *not* an order *for hearing*.

3. In schedule I. item 5 — For every previous minute of order, . . . £0 3 6

In schedule II. item 5, . . . 0 2 6

Note — that, for every order, there will of course be a previous minute thereof.

4. In schedule II. item 6 — "For entering every matter for hearing in a subdivision Court," £0 1 0

5. In schedule II. item 7 — For every order pronounced there, ... £0 5 0

Note now the fees, of which, (they being payable on the occasion of a *written instrument* exhibited,) the amount will increase with the *number* of the *words* in *each* such instrument, as well as with the number of the *instruments*, which can be contrived to be eli-

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cited: contrived, as above, by *rules and orders* of the Lord Chancellor and his confederates, the three *puisnes*, or by the *practice* of the judge or *judges* of the several courts, in or by which these instruments are respectively exhibited.

6. In schedule I. item 10 — in schedule II. item 11 :—in both schedules, the description of the source of the fees is the same — namely, for copies of affidavits, *orders*, and other proceedings, per folio of ninety words, ... £0 0 1½

In these three halfpence, behold the premium which so many learned persons, of whom one is noble, and divers and sundry others honourable, are giving themselves, for every ninety words they can contrive to get put into these several written instruments. Taken by itself, this sum, three halfpence, is no great matter: but, many littles (says the proverb) make a mickle; and four of these *littles* constitute more than many a debtor or creditor has for a day's sustenance: and, when taken from him, will deprive him of it.

7. In schedule II. item 8 — For fees on the trial of every issue, to be paid by the successful party, ... £2 0 0

Here presents itself a puzzle: — This anxiety to place the load on the shoulders of the successful party, whence comes it? this party, according to every natural presumption, will be the party *in the right*: and, in the mind of every man, this presumption will be the stronger, the higher his opinion is of the aptitude of the judicatory by which this same thing called *an issue* is to be tried; the judicatory — that is to say, in this case, a *jury*: and, in the opinion of the noble and learned author of this bill, how much lower than the seventh heaven is the place occupied by a *jury*, of what sort of men soever composed, so there be twelve of them, and the twelve put all of them into a box? This penalty, why thus imposed upon a man for having been, by a jury, pronounced to be in the right?

Then as to *pockets*: — the pocket, or pockets, into which this same £2 is to find its way; to find its way — in the first place *immediately*, — in the next place, ultimately: where are these same pockets — whose are they to be? Be this as it may, the *court* is in this case the court of *review*, and the judge, before whom the issue is to be tried, is "one of the judges thereof:" so says § 4 of this second edition of the Commons' bill.

Now, then, to what purpose other than the *fee-gathering* purpose, is organized the complication produced by the mention thus made of the word *issue*? Can any bounds be assigned to the amount of the property, in relation to which, in the ordinary course of things, in every day's practice, questions of *fact* have been decided upon by the existing commissioners, and will have to be decided upon by the *new* commissioners, and without this predatory formality of sending the question to be tried by *an issue*? If in those instances the mode employed in determining this same question of fact is a proper and sufficient one, — how can it be otherwise than sufficient, in any of those instances in which these learned judges are authorized to load the suitors with the burthen, and their own pockets with the benefit, of this tax? Then again — in the case in question, is the established *fiction* to be employed?—the fiction of a feigned action in a court of common law, with the fees, the expense, and the delay attached to it? For the shutting the door against this money-snatching lie, so regularly told by judges and their accomplices, I see no promise in this bill: nor, to my recollection, has the door been shut against it by any act of parliament. Were the practice a common one, the abomination constituted by the chancery and so-called *equity* proceedings, could not, even by the so-much-too-patient people, have been thus long suffered.

But, of the twelve *good men and true*, with the burthen imposed on *them* as well as on the suitors — where, in *this* case (not to speak of other cases,) is the *need*, not to speak of *use*? True it is, above all price is the institution of a jury: and *that* on two distinct and widely different accounts. One is — the *publicity* it has been the means of securing to all proceedings in which it has place; the other is — the *veto*, with which, at the price of submitting to torture and committing perjury, it enables the people, to so great an extent, to paralyze tyrannical and liberticide laws and judicial practice. But, on which of these two properties will the noble and learned author of the bill lay his finger, as being, on the present occasion (not to speak of former occasions,) the property by which the institution has been recommended to his favour? and *that* with such effect, as to have produced this his determination to force it into this branch of business, to which it has hitherto been almost, if not quite, a stranger? Thus to force it in, and thereby to put this additional instrument of evil into the hands of every *malâ fide* suitor —every dishonest suitor, who, knowing himself to be in the wrong, trusts to the relative and comparative indigence of an opponent, for his success? Assuredly to neither of the positions, by which these two properties are pronounced *beneficial*, will he subscribe: which being the case, should he venture to attempt a justification of this arrangement, he will find himself reduced to his old aphorism—namely, that, provided they be in number twelve, and all twelve put into a box in a chamber called a *court of justice* (not a box in the *Opera-house*) — men, no one of whom had ever been in a court of judicature in his life, will understand the business of judicature better than

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a man who has passed half his life in the practice of it.*

Here follows an extract from the self-published speech of Henry Brougham, Esq., spoken in Honourable House, February the 7th, 1828, on moving the *Local Judicatory Bill:*—

Page 16.—"There are two observations, sir, which I have to make, relative to the judges generally, and which I may as well state now I am upon that subject. I highly approve of paying those learned persons by salaries, and *not* by fees, as a general principle; but so long as it is the practice not to promote the judges, which I deem essential to the independence of the bench, and so long as the door is thus closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting-place, to become less strenuous in their exertions than they would be if some little *stimulus*† were applied to them. They have an irksome and an arduous duty to perform; and if no motive be held out to them, the natural consequence must be, as long as men are men, that they will have a disposition, growing with their years, to do as little as possible.

"I, therefore, would hold out an inducement to them to labour vigorously, by allowing them a certain moderate amount of fees. I say a very moderate amount, a very small addition to their fixed salary, would operate as an *incentive;* and if this were thought expedient, it ought to be so ordered that such fees should not be in proportion to the *length of a suit*, or the *number of its stages*, but that the amount should be fixed and defined once for all, in each piece of business *finally* disposed of.‡

"I am quite aware that this mode of payment is not likely to meet with general support, especially with the support of the reformers of the law; but I give the suggestion as the result of *long reflection*,‖ which

* For all these judicatories, where are to be the several and respective *justice-chambers*? On this occasion, let us hope that a *court-building* job is not intended to be added to the *church-building* job. I say *justice-chamber*—to keep clear of the *ambiguity* involved in the word *court*, as well as in the word *church:* an ambiguity, by which so many worthless and maleficent real entities are respectively erected into, and confounded with, one venerated fictitious entity,

As to the institution of a *jury*, so far am I from being an enemy to it, that, to everything in it which is beneficial, I give an extent, in a vast proportion beyond what it has at present; namely, by means of an improved *substitute*, to which I give the name of *quasi-jury*.

† *Stimulus* indeed! Profit, which is the same, neither more nor less, exertion or no exertion, and, if exertion, how strenuous or how little strenuous soever it may be,—in this state of things, what is the exertion which the stimulus is capable of affording?—a profit, moreover, which, more or less of it, if not all of it, is received and pocketed—not by the man in question—the judge—but by his locatee—the man appointed by him to a different office, though indeed an office of which he has the patronage? *Stimulus* indeed! Of those same subordinates of his, be they who they may—even of these men, how is it, that to any exertions of theirs, by these same fees, any stimulus can possibly be applied? for, in their instance as well as in his—exertion or no exertion—exactly the same is the profit, neither more nor less.

This same exertion—how is it to come? what is there to call it forth? One man puts his name to a *paper*, and for so doing receives a *fee:* for the motion thus given to his hand, what are the exertions necessary—what the degrees of *stimulatedness* they are susceptible of?

Another man takes the *copy* of a paper, and for this same copy takes a fee: what are the exertions here?

Tell us, good Mr. Brougham, I said whilom;—tell us, good Lord Brougham, I say now.—What! mute? O yes: to all these questions, mute you ever have been, mute you are, and mute you ever will be.

Certain occasions there are (suppose) on which the exertions might, by this supposed stimulus, be producible: to these occasions is the application of it confined? Not it indeed: it is altogether indiscriminate.

Stimulus indeed! Exertion made strenuous! O yes: certain occasions there are, on which—certain *purposes* there are, for which—the property of a fee to act as a stimulus—to produce exertions, and those strenuous—and made to act, and with effect, with but too much effect,—shall not be disputed: purpose, the producing occasions for the demand and gathering in of fees; occasion, every occasion on which a cause, or a pretence, for such demand can be manufactured.

Yes: to *this* stimulative power of fees—to the stimulative power of fees when *thus* applied,—to this it is that the whole technical system of procedure—every part of it—that productive system of which his Lordship has done so much towards augmenting the efficiency:—to this it is that the people are indebted for that system of factitious expense and delay, by which *justice*, or what goes by the name of it, is *denied* to the vast majority of them, and at so exorbitant a price *sold* to all besides.

Stimulus indeed! O yes: as to the work of generation, so far as expense, delay, and vexation, are the fruit of it, approdisiacs—cantharides—of altogether incontestible, irresistible virtue, are these same *fees*.

‡ A "*piece of business*," what? Of this same piece of business, what "disposition" is it that will be universally understood to be a "*final*" one?

‖ *Long reflection.*] Long reflection indeed! This was anno 1829, when he was plain *Henry Brougham*—plain barrister-at-law—how famed soever in the same. Two years have elapsed: he is now Lord High Chancellor—he is now omnipotent—he is now invested with the power, the magnitude of which cannot be more appositely or impressively displayed or testified, than by the circumstance of its giving existence to a measure such as this. In this it is that we have

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has produced a leaning in my mind toward some such plan. I throw out the matter for inquiry, as the fruit of *actual observation*,* and not from any fancy that I have in my own head.

"But I may also mention, that some friends of the highest rank and largest experience in the profession agree with me † in this point, — men who are among the soundest and most zealous supporters of reform in the courts of law."

22d Feb. 1831, *Mirror of Parliament*, p. 409. — "The fourth principle,‡ and the last

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the only shadow of a use, which his imagination — powerful and fruitful as it is — is able to frame for putting it to in idea. And now, what does he? He has taken in hand the instrument — he has studied it — he has pronounced it a good one, and fit for use: yes — fit for this use: and after all, the only use which he can find hardihood enough to speak of with approbation — this use he does not put it to: all the uses, on which, on this occasion, he has passed condemnation — condemnation which, though but implied, is not the less manifest — and on other occasions (as will be seen) such vehement condemnation — all these uses he now not only approves, but, in numbers of instances altogether countless, will be seen putting them to.

Oh no! not fees alone, but salary eke also: — salary, so it be added, not substituted to them, he has no objection to.

* *Actual observation.*] Actual observation? Quere, of what? — of the moon? or of the satellites of Jupiter? or of any of those *conjunctions* by which days are pronounced lucky or unlucky, and fortunes told?

† *Agree with me.*] Agree with him? O yes: to this assurance, credence, may be given without much danger of error. Suppose an enactment made, aiming, in appearance, at this object, — no want, assuredly enough, would there be of fees: fees generated by *doubts* and consequent suits; fees of the genuine description, generated by doubts as to the source out of which this new-invented spurious fee, or rather so-called *fee*, was to be understood to flow.

Of this same stimulant, what shall be the dose? Shall it be the same in every *sort* of bankruptcy case? — shall it be the same in every *individual* bankruptcy case? In Equity, an instance may be seen of a suit, in which the value of the property in question did not exceed some such matter as £10: others, in which it has not been less than some such matter as a million of pounds. I speak thus loosely, because, on an occasion such as this, trifling errors are not worth guarding against: nor, in bankruptcy matters, is the case much different. In all these cases, is this fee (call it the *clenching* fee, or the *quietus* fee) to be the same or different? If different, — the magnitude of it bearing a certain proportion to the value of the subject-matter of the suit (this same value — quere, how to be ascertained?) what shall be that proportion? Here, then, would be to be made a *scale* of fees: here would be to be made matter for a *schedule*. Thus, then, would learned gentlemen have matter for *doubts* — matter for "*great doubts*:" matter for swarms of suits, each of them pregnant with swarms of doubts: suits, out of any one of which, with the assistance of a Lord Eldon, a *malâ fide* suitor, having for his object the ruin of a man marked out by him for his victim — destruction of his property, with or without the acquisition of it — might be able to drag it on to five, ten, or fifteen years' length, at the expense, more or less, of as many thousand pounds. No: the question as to the disposition of those same men, who, being "in the profession," are among those "of the highest rank and largest experience" in the same, — the question as to their agreement on this subject, with his then Barristership, now Lordship, is a question out of which no such, nor any other *doubts*, can be generated: nor, in regard to these same learned gentlemen, need it be stated as matter of great doubt, whether they are among the "most zealous supporters of reform in the courts of law."

‡ *The fourth principle.*] (1.) "Judges should be *remunerated* for their labour.... (2.) Judges ought to be *well* remunerated..... (3.) Judges labour.... ought to be *amply* but not *extravagantly* paid for."

"1. The patient should be *physicked* for his disease.... 2. The patient ought to be *well* physicked.... 3. The disease ought to be *amply* but not *extravagantly* physicked for." What should we say of a medical practitioner whose prescription should run thus?

A genus of discourse there is, which goes by the name of *twaddle*: may not this be stated as being a species of it?"

Yes: if you are a man of craft, exquisite is the subserviency of this apparently silly matter to your purposes — to any of them that will not bear the light. Talking all along in vague generalities, composed of words of indeterminate signification — no line drawn anywhere between the quantity that is and the quantity that is not eligible: — talking thus, let but your language run smoothly, everybody, as he thinks, understands you — understands you in his own sense — in the sense most pleasing to himself — in the sense which accordingly renders him most pleased with you: talk thus — and, so far as depends on *him*, your point is gained.

Yes — everybody: not merely those who, having a sinister interest to serve, are determined to be satisfied with whatever it is that you say — not only these, but even the few, who, if they knew how, and if it did not require too great a sacrifice, nor give them too much trouble, would rather do, and be thought to do right than wrong: and who are in the House, either to oblige a friend or for a lounge, instead of Brookes's, Almack's, the Athenæum, the Opera, or a private party. Advice, descriptive of this policy, with recommendation to employ it — advice to this effect, would make a most appropriate match with *Hamilton's Parliamentary Logic*; and, if not already there, should in the next edition be inserted in it.

So much as to persons at large. Now as to his noble and learned Lordship.

Well then — this same *twaddle*, when he was thus talking it, was it with him as with *Monsieur Jourdan*, who had been talking prose all his life without knowing it? O no: perfectly well what he was about knew he. *Exoteric* and *esoteric* — what was that school? was it not Pythagoras's, in which men are all along taught how, in and by the same set of words, to deliver two different

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with which I shall trouble your Lordships at present, is to provide, where it is possible, (and I know not why it should not always be possible,) that judges *should be remunerated*

and even opposite doctrines — one of them designated by the one, the other by the other, of these two words — exoteric for the deception and satisfaction of the people without doors (for that is the meaning of the word) — *profanum vulgus* (as Horace calls them) — the esoteric for the use, purpose, and information of people within doors — the choice few — the noble lords, honourable gentlemen, and select vestrymen, of those days? Of the doctrine thus preached by their noble and learned professor, the obvious sense was the *twaddlic* — the exoteric — sense; but besides this, had it not an *esoteric* sense? O yes: that it had.

A man who, for a particular purpose, puts on a character different from, upon occasion even directly opposite to, his own, is no novelty in this wicked world of ours. For the purpose of slaying tyrant Tarquin, did not one of the Brutuses wrap himself up in the garb of insanity? For a similar purpose, did not Hamlet wrap himself up in the like garb?

In former days, monarchs, for their amusement — were they not wont to have *wits*, under the garb and name of *fools*? Look then at our noble and learned twaddlist — look at him a little closely — look at him in his robes — and ask yourself, whether on this occasion you do not see him covering them with the garb of a simpleton? And why in a character so opposite to his own? Oh! only for the purpose of putting a little bit of deceit upon us simple folks — upon us the people without doors! And why thus deceive us? Oh! no harm to us! all for our own good! The purpose (it may be seen) divides itself into two parts: Part 1. engaging Houses Right Honourable and Honourable to concur in the giving, in addition to salary, the dear delightful *fees*: here we have the esoteric doctrine — the doctrine for the reception of which they were and are, by habit as well as disposition, so well prepared: Part 2. engaging us whose place is *without doors* to bestow our acquiescence in this same so agreeable an arrangement.

O yes: when you see the noble and learned preacher, with the robes of Judge Bridoison over his own, delivering this same twaddle doctrine; call it, if you please, by that name: but, when you have done so, mark well the ingenuity with which, in the prosecution of this same purpose, it is employed — employed in raising clouds — clouds of dust, for the purpose of blinding such eyes as the purpose required to be blinded — those of the people, who are standing and staring *without doors*, and those of such of the noble lords, if any such there be, who are not in the secret, and who, were their eyes open, might be shy of giving their concurrence.

Behold him accordingly taking in hand the above-mentioned three *nothings*, and holding them up to view in the guise of so many *somethings*: behold him taking them in hand, and making them into a *wedge* — a wedge for insinuating the job, and, when once in, driving it on into adoption.

So admirably well adapted to its purpose is this same *wedge*, that it unites with it the properties of an *arrow* — an arrow with *barbs* to it — an arrow too firmly fixed to be ever drawn out; especially out of bosoms — noble and honourable bosoms — so little disposed to part with it.

"Judges should be *remunerated* for their labour:" here we have the wedge in the place into which it has been introduced — simple insertion into the prepared fissure. "They ought to be *well* remunerated:" here we see it in the place made for it by the first stroke given to it. "Their labours ought to be *amply* but not *extravagantly* paid for:" here we see it in the place made for it by the second stroke, which some may think is rather a bold one.

Look once more at this same "principle," with the propositions it consists of: do but see what nice, sweet, innocent, unobjectionable things they are: "Judges should be remunerated for their labours:" well then—where is the labourer that ought not to be remunerated for his labour?

So much for the *first* of these his three commandments: look now at the *second*; and the second, may we not see, "is like unto it."— "Judges ought to be *well* remunerated." See here too: be he ever so perverse — be he perversity itself, exists there that man that can be perverse enough, so much as to wish to say, or if he be, with all his ingenuity ingenious enough to find anything to say, against this? Put it to him to find if he can a thing which, if done at all, ought *not* to be *well* done.

So much for the second of these same propositions. Now for the third and last: — "Judges ought to be *amply* but not *extravagantly* remunerated." So here again: be the men who they may, especially men whose labour is so "high and intellectual," so as it be not *extravagantly*, can there be any harm in its being *amply* remunerated?

So much for *quantity*: now as to *shape*: for receiving justification, and thus completing the operation, nothing now remains but *shape*.

Not less triumphant will this justification be seen to be than that *other*—"Judges," we have seen already, "ought to be *well* remunerated:" but if they *are well* remunerated, how can their remuneration be otherwise than *good*? and *good* how can it be, unless it be so for all purposes it is required for? Well then: in the present case, of these same purposes there are two; for one of them, *salary* is required; for the other, *fees*. Now, then, these same judges, learned as they are, pure and disinterested as they are, — still are they, after all, — still are they, alas! but men: accordingly, not an inch will they budge, without the *stimulus* — without some little gentle touch of it. Well then, as to the expense of this same necessary tickle-toby: is it for the public to be made to bear the whole burthen of it? the individuals bearing no part of it—the individuals by whom is reaped the whole of the benefit of the "*high services*?" The interest of the whole public, is it to be made a complete sacrifice of, to the interest of a handful of individuals? Forbid it, justice!

Let it not pass unobserved, that that which under the name of a "*principle*"—one principle, namely, "the fourth principle"— the last in the train of principles we have been seeing, is (as the reader may have observed) a sort of a principle with three *heads* to it: a sort of a *Cerberus*, employed to guard from spoliation the so-ingeniously-discovered and about-to-be-so-well-worked mine, with its treasures, composed of salary *and* fees.

Be that as it may, by hook or by crook, every-

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for their labours. It relates to the remuneration of the judges and their subordinate officers, and they ought to be *well* remunerated; for if you would have men fit for the station

thing is now settled. Now have we, in the words of an old toast, an old Oxford toast, "all we wish, and all we want, and all our wanton wishes:" here have we completed this same delicious compound, composed of *salary with fees*. Now may we write Q. E. F.; for now is the problem solved. Solved! and by what but by the twaddle?

Before we have done with it, view it in a still more enlarged point of view, and mark well how admirably well suited to this its purpose is this same *twaddle*. Admire the stretching-leather it is composed of: extendible or contractible, as the occasion, whatever it be, may require.

Constructed upon the most approved models you will see this implement to be. Have you an *abuse* to establish or defend? You cast your eye on it, of course, to see whether this same implement is applicable to it. To be applicable, it must present to view a scale divisible into two parts which have no determinate bounds: for example in *physics*, the scale commencing at the most splendid light, and terminating in utter darkness. In morals and politics, you have a correspondent scale, commencing with perfect *liberty*, and terminating at consummate *licentiousness*. Look at the example: you will see in it the very sort of thing you want. You take it in hand, and proceed thus: *liberty* (you say) is a good thing, and ought always to be allowed; no man can be more sensible of this than I am: but *licentiousness* is a bad thing, and ought always to be punished. Is there anywhere a *liberty* taken that you don't like to see taken? You lay hold of it accordingly, stamp upon it the word *licentiousness*, and punish for it. In thus doing, who is there that can prove you have been doing wrong?—who is there that can prove that what you have thus been punishing for is not *licentiousness*—is nothing but *liberty*? To make this proof, he must show the bounds by which the *licentiousness* and the *liberty* are divided: he must exhibit that which has no existence.

Viewed upon this more enlarged scale, *liberty*, it will be seen, should be *amply* but not *extravagantly* allowed; licentiousness, *amply* but not *extravagantly* punished.

Thus will it be with judges, so long as they are taken from the order of advocates—"the indiscriminate defenders of right and wrong." On the outside, you see the robe of the judge: but underneath it, and for a lining, remains still the silk gown of the advocate. Look at it through the glass here presented to you: the judge's robe will be gauze; the gown scarlet satin underneath it.

Little boys in their cricket have every now and then a functionary, whose style and title is *Jack-on-both-sides;* not on both sides at once, that being impossible; but on both sides successively and alternately. So it is with a barrister: on one and the same point, if not in one and the same suit, he will be for plaintiff at one time, for defendant at another: whichever he is for, that one will be everything that is good; the adversary, everything that is bad.

When understandings are to be confounded and made dizzy, a party man, writer or speaker, may be on one side and the other, not only on the same occasion, but, as we have been seeing, at the same time, talking backwards and forwards in the same breath: not less easily may he be of the one party and the other at *different* times. As to chancellors, true it is, that they have not often, if ever, been seen thus *vibrating*, or even *migrating*. But whence is this? Is it that they would not accept? No: but that they were never chosen. But for this, to-day his Lordship would be for Earl Grey; because he loves *liberty:* tomorrow for the Duke of Wellington; because he hates *licentiousness*. Would not this be the case? Reader, look at what goes before this—look at what follows after it—and then judge.

Meaning to hold up to view an accommodating standard, Lord Bacon typifies it somewhere by the name of the *regula Lesbia:* when lying on the shelf, it is strait, as rules should be; taken in hand and employed, the right line, if wanted so to do, bends and is transformed into any sort of curve. Put together, "*liberty* and *licentiousness*" make a *regula Lesbia:* so likewise "*amply*, not *extravagantly*." As to how this sort of implement came to be made at Lesbos, let any one who feels so disposed, go and inquire: I have not time.

Think not that your attention—think not that all the attention you can bestow upon this subject—can be ill-bestowed: for this, even this, is the language in which all the depredation that has brought on the *reform* measure has its support. "Aptitude," says this doctrine, "is *as* opulence:" be the situation what it will, a man's aptitude for it will be exactly as the quantity of money you cram his pocket with: do but as his learned lordship bids you—make but his remuneration *ample* enough—and, as it is written, "all other things needful shall be added unto you." Yes: when the new parliament meets, then by its order (as by a former parliament in a case within my memory was done by a book,[a]) should this same maxim—*aptitude is as opulence*—be burnt by the hands of the common hangman; which, by the bye, is the only employment I would give him. One of these days, may perhaps be seen in Honourable House, written up in letters of gold—*aptitude is inversely as opulence:*—one of these days, when the inventor and demonstrator of it is no longer in existence to behold it.[b]

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[a] *Droit le Roy:* Author, a man whose name began with a B (wasn't it Broderick?) an attorney, member of Lincoln's Inn: in Ireland, he was hanged for murder. Object of *Droit le Roy*—and that object very decently accomplished—showing that all the doctrines, which the most determined ultra Tories could preach and wish to act upon, had for their support, and were fully borne out, by those delivered from time to time by learned judges, from the time whereof memory runneth not to the contrary, down to the time then present or not far distant. Whether bespoken or no, the dose was deemed too strong to go down, even in the estimate of George the Third, and his Lord Chief-Justice of *Bank le Roy* (Lord Mansfield,) and other cabinet ministers: for disavowal, it was according thus dealt with. I saw the book, and turned it over; but did not buy it. For many years past, I have made fruitless search after it. Could a copy be recovered, a second edition might be enriched with valuable matter from Lord Eldon: a specimen may be seen in "*Indications respecting Lord Eldon*," inserted into "*Official Aptitude Maximized—Expense Minimized.*"

[b] See "Official Aptitude Maximized—Expense Minimized."

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of judges, the high and intellectual species of labour you expect from them ought to be *amply*, but not *extravagantly*, paid for. But what I say in point of *principle*, is, that, generally speaking, their remuneration ought to be by salary, and not by fees." "And not by fees,"—see here *profession*:—for *performance*, see his Lordship's schedule the second, with its eleven sources, out of which *fees* are made to spring. All this talking backwards and forwards we have had, and here we have the result of it: and thus we have before us, and in senses more than one, his said Lordship's *principles*.

If, in the exposition above given of these same so-styled principles, any errors should be found, the cause of them may perhaps be—it may at any rate be thought to be—in the author's being in that case in which, in days of yore, he was by the noble lord looked upon as being—namely that of one "knowing more of books than of men." Assuredly, whatsoever in this particular may be the case with other men, to myself it has not happened for so many days in the year as it has to his Lordship to be in the midst of, and have for the object of *knowledge*, the noble brotherhood of those high and mighty lords, who, on every occasion, as they never cease to bear witness, have for the sole objects of their care, church, king, and people (church first, then king, then people,) with only now and then a small scrap of care for their respective families; and even this never otherwise than in due subordination to that care paramount, which has for its objects the said church, king, and people: too noble, each one of them, to take any thought for himself, had he not his noble friends for flappers: their motives, accordingly, on each occasion, diamonds—diamonds of the very first water—water of the purest kind, scorning the use of filtering-stones; their breasts having for composition and covering, instead of flesh and blood, plate glass; having, that is to say, either having already, or at least (as was the case with a certain noble lord in former days, when he with "all the rest of the *talents*" were in power) wishing that they had.

Let me not here be accused of exaggeration. In all this, no more is there of exaggeration than had place in the language of the noble and learned lord, when, anno 1828, on the 7th of February, in his character of law reformist, he came forward

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To the operation of cramming fuller and fuller the pockets of functionaries, on pretence of securing aptitude, what shall be substituted? The answer has been already given—competition; that is to say, on the part of all candidates in whose instance appropriate aptitude, in all its branches, has been made manifest by the test of examination, as above spoken of under the head of proposed amendments.

So much for the principles of the noble and learned lord. Have you a curiosity to see a set of a different sort? Turn, then, to some of those books, which have for their author a person who, when, by Whig nurses, Radical principles were to be overlaid at their birth, and honourable noses were to be turned up against them, was spoken of as being a man who "knew more of books than of men:" turn to those books, and there you may see, for example, the two above-exemplified principles—the *greatest-happiness principle*—the *non-disappointment*, or say the *disappointment-minimizing* principle. Is your curiosity strong enough to carry you any further? Go then to the principle which prescribes the conjunction of interest with duty—say the *interest-and-duty-conjoining principle*;[a] thence, on to the principle by which *official aptitude* is asserted to be augmented, not in proportion as official *emolument* is *augmented*, but in proportion as it is *reduced*;—these, with any number of others you please from the same mint. But by any one of these, were his Lordship to take it in hand (for, for the purpose of argument, even the *impossible* may be supposed *existing*,) by any one of them, were his Lordship to take it in hand and make application of it from the woolsack,—such a scene of nausea might be produced by it—such a scene as delicacy forbids the mention of.

In order to its answering its purpose, in what state should a principle be? *Answer*: It should be in the highest state of condensation; comprised in the compass of two or three words, consisting for example, of a *substantive* with its attached *adjective*, or (as some say) *attributive*: though the adjective may be a substantive used adjectively, and either the one or the other, or both, may be composed of words, two or even any greater number, so as there be not a verb: the words strung together in the manner of the name given to a parliamentary bill in the votes, and the name given to anything in the German language. Now, then, say *here*, for examples, "*greatest happiness principle*,"—"*non-disappointment principle*." In this way, the *principle*, with its two or three words, exhibits the substance, and performs the office, of a *rule*:—of a rule which, if expressed at length, would occupy perhaps more than as many lines. Now, then, why employ the matter in *this* form, rather than in that of a *rule*? *Answer*: Because, when thus reduced in bulk, it is, in every instance, *capable* of being made to enter, and accordingly always *does* enter, into the composition of a sentence: whereas a *rule*, and, in particular, the *rule* of which the *principle* is a sort of abridgment, can seldom find expression in a number of words small enough to admit of its performing this office.

In the instance here in question, not very exceptionable (it is true) on account of its length, how much soever on other accounts, is the form of words, by which expression might have been given to a rule suited to the purpose of conveying the advice which it was his Lordship's purpose to give, and see taken: and this advice was of the number of those which, on no occasion, find established, in noble breasts, any more than in honourable ones, any violent aversion to them—any very obdurate reluctance either to the receiving, or to the acting upon them.—*Make the remuneration of all offices as large as the people will endure to see it made*; in these words may be seen the *rule*:—*that noble and honourable younger sons, and eldest sons during the lives of their respective noble fathers* (not to speak of said fathers themselves,) *may be provided for as nobly as possible*: here may be seen the *reason* of the rule.

Now for the conclusion of this same principle—"what I say in point of *principle* is that, generally speaking, their remuneration ought to be by salary, and not by fees." "And not by fees,"—see here *profession*:—for *performance*, see his Lordship's schedule the second, with its eleven sources, out of which *fees* are made to spring. All this talking backwards and forwards we have had, and here we have the result of it: and thus we have before us, and in senses more than one, his said Lordship's *principles*.

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[a] This principle, it is true, we may, by and by, see his Lordship himself holding up to view. Yes: but how? let *Pope* speak—

"Damn with faint praise, assent with civil leer;
And, without sneering, others teach to sneer."

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nerally speaking, their remuneration ought to be by salary, and *not* by fees."

So much for *Mr.* Brougham: come we now to *Lord* Brougham. — *Mirror*, 22d February 1831, p. 409. — "When you remunerate a judge by *fees*, according to the *steps* of procedure, you expose him to the temptation* of encouraging *delay* and *expense* in order to increase his own emoluments, and thus, in *theory* at least, if not in effect, you set interest in opposition to duty. To be sure, the judges in the higher courts are not apt to be swayed by such feelings from the straight line of their duty, whatever be the *temptation*."

with that glorious undertaking of his, by which, "all exaggeration" expressly denied, perfection was virtually promised to the judiciary establishment, with its system of procedure — all by so simple an operation as that of taking in hand any twelve men, so they were but called good and true, putting them into a box,[a] and thus, as in an *omnibus*, travelling them over the whole field of judicial procedure.

To return to *purity*. In this same state of purity his Lordship will not deny them to be — noble lords,—noble, and most noble, right reverend, and above all, most reverend—all of them together. No, assuredly; for in it, lest it should escape the memories of this "manner of men," never is he tired of reminding them that they are.

As to those judges who will have to bow down to him and hail him as their creator — those, to wit, whom we shall see him alluding to under the name of "*higher judges*," — they are not, it appears, regarded by him as being in that state of absolute purity, after the manner of pure gold rendered so by having passed through the refiner's fires: some little alloy of a less noble metal we shall find his discernment recognising in them: encompassed as they are with "*temptation*," they may be conceived at least, if not absolutely believed to be, capable of yielding to it: for their being brought into that same desirable state, there needs however but one simple and obvious recipe, which is their being placed in that same exalted and purifying situation of theirs, in which all men and all things are pure.

To these judges, the said creator, of course, considers himself as aggregating his said creatures—his chief and "other judges," and by that same simple operation enduing them with the requisite portion of *purity*: in which glorious state we shall for the moment leave them.

Thus much for the entire foundation of the noble and learned lord's magnificent edifice: the foundation, composed as it is of "*principles*," four in number; of which principles, the third, when it comes to be laid down, is styled, not a *principle*, but a *proposition*; and the fourth, which *is* styled a *principle*, is *not* a *principle*, but a composition, composed of three *propositions* — namely, the three propositions which the reader has been seeing, and with which, in a degree best known to himself, he cannot fail to have been edified.

* *Temptation.*] Behold here — and not here only, but in page 415 also—the noble and learned

[a] Self-published speech of Henry Brougham, Esq. M.P., 7th February 1828, on his motion for a law reform commission, p. 5.

They are men standing in a high and conspicuous station — men *selected for their unspotted and unimpeachable integrity*,† as well as for their great experience and *general fitness*‡ *for their exalted stations*. They are likewise *under the observation of a watchful public*,‖ and *a jealous Bar*,§ and many of them have seats *in either House of Parliament*,¶ where they may be called upon, as responsible officers, to explain any part of their conduct which may be considered objectionable. Nevertheless, I am of opinion that public men, however high their character may be, ought not** to be placed in circumstances in which their in-

eyes wide open to the *temptation*, and, at the same time, the noble and learned mouth saying its prayers to the lords, and beseeching them to deliver him from that same evil, into which, at that same moment, he was doing what depended upon him — he was putting his rhetorical powers to the stretch — for the purpose of leading and plunging over head and ears himself, and the whole train of the creatures he was occupying himself in the creation of. Witness schedule the first of the *bill* in question, in the last edition of it; witness the *act*, into which in due course, it was predestinated to be transfigured, with its schedule the second, and the several fees contained in it.

† *Unspotted and unimpeachable integrity.*] Scene, *Utopia*. Of the romance so intitulé, characteristic features are, effects — felicitous effects, existing without causes; figs growing on thorns; grapes on thistles.

‡ *Fitness.*] By what means ascertained? Here you have the *effect*: and where have you the cause?

‖ Over men such as they are, and selected as they are, what need of any such or any other inspectors?

§ *Jealous Bar.*] Interested in all the abuses by which the judges in question make their profit; anxious to be raised to the situation in which that profit grows, and in those same situations to come in for shares in that same profit: eyes closed, as is the oyster shell against the knife, against those same abuses. Jealous men such as these? O yes: but of what? Of everything which can lessen the abuse, or prevent the augmentation of it: such being their interest, and without so much as a duty, as in the case of those same judges, for a counterbalance to it.

¶ *In Parliament.*] Occupying thus two incompatible situations — undertaking the fulfilment of two duties, the conjunct fulfilment of which is (unless one and the same man can be in two different places at one and the same time) physically impossible: one of them a situation in which, if accused, each man will be his own judge; and thus, by the assurance of fruitless and uncompensated odium, stopping the mouths of all who might otherwise be accusers, and enjoying the assurance of impunity for every profitable and every agreeable mal-practice.

** *Ought not.*] Yes; of opinion that they ought *not*: and this at the close of a string of arguments for which the noble and learned brains have been put to rack, for the purpose of making us believe that that which, in consideration of the danger, "ought *not*" to be done, may, under and in spite of that same danger, be nevertheless done; and which he accordingly proceeds to do.

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terest comes in conflict with their duty. But even if it were certain that his interest would succumb to his duty, it is of the greatest importance to avoid placing a judge in a situation where he must be an object of jealousy and wary suspicion.*

"Such are the grounds on which I contend that even the *higher judges*,† who act under the eye of a watchful public and *jealous Bar*, and who are themselves men of *learning* and *integrity*, the least *likely* to be swayed by *interested* and *selfish* considerations,—that *even they* ought not to be placed in situations in which it is *possible* for *any* one to *suspect* that they can have any *other* object than that of the diligent, active, and impartial performance of their respective duties. Now, if this be the principle which ought to be kept in view, in reference to the *higher* judges, it is *still more important* to act upon it in reference to all inferior officers of justice. They do not stand upon such *high* and *open* ground — they are not so much in the view of the public — they are not so *immediately responsible* to parliament—and they ought to be emphatically excluded from such situations, even if the judges are not.

"There is one *nicety* in regard to this point which ought to be noticed. A judge doing his duty under the eye of the public will be induced to perform it well and diligently, since upon its due and diligent performance will depend his fame and estimation with the public, and this although he should be remunerated by a salary, and not by fees. But it is not always the same with inferior officers; and I am told that in *Ireland*, where an alteration similar to that which I propose relative to the judges has been made, some inconvenience has been felt from remunerating inferior officers by salaries instead of fees; for it is said

* *Suspicion.*] Whereupon, having strained every nerve, and squeezed out what is above, for the purpose of satisfying us that *fees may* be allowed without the production of preponderant evil, he says they ought *not* to be allowed: and thereupon proceeds to allow them to the judges, of whose benefices *he* is patron, and whose profits are accordingly *his* profits, and for whom, for the multiplication of those profits, he provides the *occasions*, twelve in number, which form the matter of the second of the two schedules.

† *Higher judges.*] Higher judges indeed! — as if, in those same *higher judges*, the appetite for fees were less rabid than in the criers of their respective courts; as if the existing system, with all its atrocities, by which the cry for law reform has been called forth, has had any other cause than the rabidness of the appetite of those same judges, and those "whose estate they have" — with their hunger and thirst for the delicious matter of which those same fees are composed.

"Men of learning and integrity! . . . . least likely to be swayed by interested and selfish considerations," . . . men of whom it is barely "possible for any one to suspect, that they *can* have any other object than that of the diligent, active, and impartial performance of their respective duties:" such are they, under the painting brush of his Lordship: in a word, the *in fæce Romuli* notwithstanding, as to every thing but sex, youth, and beauty, so many Cæsars' wives in small-clothes are these same learned judges.

Behold here the imagination of the then learned, and now noble and learned rhetorician, mounted in one of his air balloons, and in its way to the moon touching at the planet *Utopia*, and, in the person of one of the judges of that region, thus sketching out the portrait of a Westminster-hall judge. Now, then, — these vagaries, were they mere flights of poetry in prose, flights taken for mere self-amusement or a *Forget-me-not*, no notice would, on this occasion, have been taken of them: had they been the production of a Westminster school-boy, a silver groat would have been given as an appropriate reward for them. But no! all this is acted upon — acted upon as if it were literally correct and true; and accordingly, the means of self-payment *ad libitum* — the means of gorging themselves with the plunder of the afflicted — secured, in so far as words from this quarter can go, secured in and to the hands of these same judges.

Men the most distinguished for their success in "the indiscriminate defence of right and wrong," by the indiscriminate utterance of truth and falsehood — men the most distinguished for their success in the most mischievously and shamelessly mercenary of all professions, presumed thus to be above all others most disinterested! And *cui bono?* for what all this laudation? for what but for "valuable consideration?" By successful laudation of a prosecuted murderer or swindler, nothing more was to be got than the *fee* — the five guineas, once paid: whereas from the laudation thus bestowed upon every man on whom a judgeship shall have been bestowed, that profit was in contemplation which has accordingly come into possession — namely, the profit composed of the difference between a bounded mass of emolument in the shape of *salary*, and an unbounded ditto in the shape of *fees*.

Oh the ingenuity — the exquisite ingenuity of this contrivance! A time there had been, when, the purpose being thought to require it, condemnation was passed by him on that pestilence, and, reasons on that side being in existence — reasons, and those unanswerable ones, — those same reasons, or some of them, were accordingly adduced. Now, the plague being now to be inoculated, what was there, that, for this purpose, after what had been done, could be done? what was there that the nature of the case furnished and admitted of? To answer this question, and do what it was possible to do towards undoing his former untoward doings, — behold him taking in hand this same infection, — and, to put it in good odour, infusing into it the only semblance — faint as it is — the only semblance of a reason that the nature of things allowed the power of ingenuity to find for it. This is a use which it *would* be capable of being put to — but in what case? In a case which can never happen. Having thus taken the benefit of the only chance of success, which he saw the nature of things furnishing, then it is that he turns round — takes in hand this bit of a reason, such as it is, and employs it in the propagation of the profitable pestilence, and thus repairing the antecedently false steps.

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that the consequence has been, that these officers are disposed to earn their salaries more easily than, and not so well as, formerly, and that they do not perform their duties so actively as if their remuneration depended on fees.

"But I think the *true distinction* may be made, and the *line drawn somewhat in this direction. Those officers may be made dependent on fees altogether, where the multiplication of the fees shall not depend on their own discretion.*"

Mirror, 22d February 1831, page 412. — "If those allowed to remain were made not *dependent* on fees, that would be an improvement.*"

* Improvement! O yes: a capital improvement. *Dependent* — *independent* — capital, delightful tools to work with — to work well with — this same pair — this loving pair — not the less loving by being opposites. Yes: here we have again our old acquaintance — *Aptitude is as opulence.* On the former occasion, it was the *intellectual* branch that was to be provided for: provided for, but in joint tenantcy with the two other branches — the *moral* and the *active*: the provision now made has the moral branch all to itself.

Aptitude is as independence — this is the maxim now: and can independence be too complete? No, surely. There we have the *maxim*: now behold the application.

Be the man who he may, either he is already rich, or he is not: if yes, in that case, be he ever so rich, he cannot be made too independent. If he is *not* rich already, — in that case the reason is the same, but the need is more urgent; and the quantity needed is the greater, the further he is from being rich already.

Everything cannot be done at once. Stinginess — just now, stinginess is the order of the day. Stinginess being so much in fashion, his Lordship feels it prudent to content himself with his fifteen hundreds a-year, his two thousands a-year, and no more than one three thousand a-year: and so, for some time, things must perhaps continue. Wait awhile, and there sits Sir Robert Peel, who has a book, a leaf out of which his Lordship has at command, and may borrow with advantage. Sir Robert is a great admirer of Lord Bacon: he is brimful of the noble philosopher and chancellor; he has him at his finger's ends. The great departed statesman is *prayed in aid*, as we lawyers say, by the great living one, when any of his great things are to be done. *Fiat experimentum*, was the characteristic motto, on the strength of which the fame of Bacon has soared to a height so much above that of all other men. *Fiat experimentum*, was the motto of Lord Bacon; *Fiat experimentum*, is the motto of Sir Robert: he is for doing all good things gradually; he is for *consolidation*, to the exclusion of *codification*. He is for going on giving to every man the possibility of knowing what he is to be punished for not knowing: going on — but at such a pace, that after some hundred years employed in doing it, the business would be still to do; and at this rate of travelling his Lordship may, at any time, without prejudice to his own plans, be in full accordance.

Now then for one of Sir Robert's practical com-

February 22, 1831, *Mirror*, p. 414. — In page 414, immediately before the mention of

ments on Lord Bacon. Behold it in the Stipendiary Magistrates' Salary-raising act. At the first institution in 1792, it was £400 a-year; in the eyes of the magistrates themselves, this £400 a-year was sufficient; plain proof — if not, they would not have accepted it: to them, it was satisfactory: *Patrick Colquhoun*, whose activity was greater than that of all the others put together, and who in all other respects was fully equal to the best of them — Patrick Colquhoun, who was known to everybody, and the only one of them who was known to anybody — said as much to the author of these pages. But, though in the eyes of the *incumbents* there was enough of it, not so was there in those of the noble or right honourable *patron*, whoever he was: and so it was made half as much again: it was made £600 a-year. Well, what followed? When they had got it — this same £600 a-year — still they were not everything that could be wished. Thereupon came Sir Robert, and gave them a couple of hundreds a-year more; the £600 he made £800. Now then, what was to be done with this £800? As to future men there was no difficulty. But then, there were the then present ones: what to do in regard to them. What? Oh, they were entitled to it on a double account; so indifferently had they behaved themselves, that for this reason it had been found necessary to give them the £200 a-year more, to make them behave better: at the same time, so well had they behaved themselves, that gratitude joined with equality and consistency in requiring that these known and tried men, by whom such merit had been displayed, should not be left unrewarded, when the resolution was taken, that men unknown and untried should be thus advanced. Still this was but a sort of degeneration: for at the first augmentation they got half as much again as they had before; and at this second they get no more than one third as much. But Sir Robert was faint-hearted: his Lordship is made of better metal; and he will act accordingly: let but occasion call, and, casting off all disguise, he will stand up and say (speaking of his batch of judges with their followers) — Yes; the worse they behave, the more they shall have. The only man he can be afraid of in — Sir Robert Peel; and, on this ground, Sir Robert will feel his mouth stopt; stopt by a precedent of his own making; stopt — or (as we lawyers say) *estopped* — prevented by an *estoppel*.

In regard to *objects*, one man has one sort of object; another man another sort of object. Then, in regard to *experiments* — experiments in pursuit of the object — one man is for one sort of experiment; another man, for another sort. My object is a double one; to secure official aptitude, and to save money. For securing the aptitude, I have the *securities* hereinabove referred to, and hereinafter exhibited: for saving the money, and at the same time and by the same operation providing those same securities, I employ an already approved instrument: — yes: the very instrument, which in all other cases everybody is for employing, and employs accordingly. Good: but this instrument — what's the name of it? — The name of it? Why, *competition!* Now for an exhibition — Scene. Right Honourable House. At the sound of the word *competition*, out pours a deafening scream in grand chorus — "Competition! O horrid, horrible, and horrid-

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a *bottom*, mount up to the text, and therein, thus you will find it written:—"That noble and learned lord (Lord Eldon) laid a report on the table of this House respecting the taking of *fees as salaries*, in which, on examination, your Lordships will find some *excellent* principles laid down. Another report was presented to the House in the year 1798, in which the subject of fees is *again* taken up. It is there said, that no inquiry should be made whether a fee was claimed by *established practice*, but whether it was one which *ought* to be continued, and, if it was *not*, it should be *cut off*. Accordingly it was recommended that *some* of the fees then existing should be abolished, and amongst others those called *copy-fees*, as unfit to be continued. I might also instance the recommendation of the Chancery Commissioners in 1826—that fees, *as salaries*, in *most* cases should be done away with."*

est horror!" The cry subsided, and the faculty of speech, and something in the guise of argumentation retained, comes thereupon something to this effect:—Competition? yes: good in every other case: good as applied to furnishers of *goods* of all sorts: good as applied to furnishers of *personal services* of all sorts:—yes: good in *those* cases: but in *this* case, what can be more absurd. Absurd? What, are not *official* services *personal* services? Yes: but these must be excepted. Excepted? and for what reason? For what reason? O don't talk of reason. No—not on *this* occasion: occasions there are, on which there is nothing for reason to do: matters there are, which reason has nothing to do with, nor they with reason: matters, if applied to which, reason is out of place. Yes, that there are; and this is one of them.

So much for Right Honourable House; and, to save trouble, the same scene may serve for Honourable House.

Mark with what refinement and astutia it is worded—this so-called *improvement* of his Lordship's. Is it that there shall be no fees? Oh no: only that, how much soever there is of them, the learned persons are not to be left "*dependent*" on them. Accordingly, in the first place, there are to be fees, at any rate: this for the sake of the *stimulus*; and as to *what* fees, see section the second, as above. But whatever may turn out to be the amount of those fees, what a sad thing would it not be, if men were left dependent on them?—and, so uncertain is that amount, would not this be the case, if something certain were not added? Thereupon comes the necessity of a salary; which, as independence cannot be too complete, cannot (so you have seen already) be too "*ample*."

* *Done away with.*] A delicate matter this:—a truly delicate matter: and, each time, what is it that has been done? *Answer:* Just what was intended to be done.

Anno 1798, was made *one* report: and what was done? That which had been intended.

Anno 1826, another: and what was done? That which had been intended.

Anno 1831, was made this speech: this speech made, and in pursuance of it a bill brought in, and that bill passed into an act. And now, what was intended to be done? *Answer*; That which has been done accordingly. Here is a malady—a most excruciating malady: compare the operators, and note their several performances. The former operators confirmed it; but they did *not* exasperate it; this last operator has confirmed it, and he *has* exasperated it. Immediately in his schedules will this be seen by readers, and in process of time, as the act comes into operation, felt by suitors.

"*Fee as salaries?*" No:—*et sic vide diversitatem*, as Lord Coke says. Take them not *as* salaries. No: take them as something else; take them as anything else: for example, as constituting a *stimulus*; and by the first opportunity let men "behold how good and joyful it is:"—call it "a *fair stimulus*." Capital indeed is this distinction—choice the discernment exemplified in the making of it! Behold the stress laid upon it; figure to yourself learned lords and learned gentlemen, one after another, mounted upon it a cock-horse, and riding off upon it.

"*Excellent principles.*" Yes, excellent principles doubtless. But what *were* they? (says a reader.) What were they? answer I: this is more than I know; and I will spare to *myself* the labour of looking out for them, and commenting on them, and to you the labour of reading them. What he has now before him may surely, and without injustice, be taken for a fair sample of them. And the result of them—what is it? It is this: be the fee what it may—if it ought not to be continued, it ought not to be continued: if it ought to be cut off, it ought to be cut off.

But, even after taking the benefit of this reservation—of this distinction, in virtue of which they might be taken, in so far as they were not taken *as* salaries—not taken *quâ* salaries,—even they—all of them—all the ingredients in this sweet paste—are they to be done away with? Oh no; that would be carrying things *too far*: *some* of them, yes; but only *some* of them. Thus far anno 1798. But, anno 1826, with the benefit of a course of consideration carried on during the interval of eight-and-twenty-years, learned lords and gentlemen had stretched their legs, in such sort as to have got a step farther: the recommendation (as we see) then was—that "*fees as salaries* should in *most* cases be done away with." What! not in *all* cases? not without the benefit of this distinction? Oh no: What! and, not even *with* the benefit of this distinction? No; not even in this case: that would still be going too far; only in *some* cases; whereupon, in all the other cases, in every one of which the same sort of mischief is produced, they remain established. Behold the problem solved: *quod erat faciendum est factum*; and $x = y$ are found to be $= 0$.

Hang half and save half, says a familiar adage; this adage learned lords and gentlemen have taken in hand, made it into a maxim, and improved upon it: say *hang half and save the whole*—saying this, you have it in its improved state.

Look at the fees called copy-fees; on them may be seen a mark set: they are marked out to serve as a scapegoat to be sacrificed. To be sacrificed? and why? That the rest may remain unsacrificed, and be saved. But this scapegoat, *was* he thereupon sacrificed? has he *since* been sacrificed?

22d February 1831, *Mirror*, pp. 414, 415.—"Bottomed on these recommendations, I propose to your Lordships that *no fees* shall in future be taken by the *masters*, and I would

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have those of the *clerks* so regulated as never to exceed a *fixed maximum;*[a] and that, while all great *temptation*† to *multiply forms*, and create delay and expense to the suitors, are

Quære eo. Is he intended to be sacrificed? Wait and see.

Directions to public servants, such as legislators and reporting chairmen of committees; taken from Dean Swift's "*Directions to Servants:*" —When you have anything to report upon, what honest men wish to see done away with, and you do not like to part with, recommend that it shall be done away with, but take care that the quantity so recommended to be done away with, shall be an indeterminate quantity; "*some*," for example; or in case of pressure, you may even say *most:* in the *tout ensemble* of this recommendation, people will see your *good disposition*, your *good intention:* in the qualifying adjunct *some* or *most*, they will see your *caution* — your *prudence.* Seeing all this, how can they be so unreasonable, these same people, as not to be satisfied? Well then; if they are satisfied, then *everything is as it should be:* and there the matter rests.

And, what if they *had* been *intended* to be abolished? what if they had been *abolished* accordingly — that is to say, in so far as it was and is in the power of parliament to abolish them? What *then?* Ask Lord Tenterden. The *table* of these fees hung up or not hung up—hung up, and in the sight of everybody — the fee in question being of the number,—will it be thus kept from being exacted? Oh no; not it, indeed. It will not the less continue to be exacted; at any rate, if it be under and in virtue of a situation the patronage of which belongs to his Lordship. Well; but suppose a table of fees established — a table stating the several *occasions* on which fees may be taken, and the fees that may be taken on those several occasions, and on this or that occasion a fee taken to an amount greater than that which is so allowed:—suppose this done, and the extortion brought before his Lordship, will not the extorter, as such, be punished for it? Oh no. What then? Why, restitution will perhaps be ordered. Suppose, for example, six shillings the amount of the fee allowed, and ten-and-sixpence the money taken: you have but to make application to the court; and, so it be not in the way of a criminal prosecution, but in a quiet *civil* way, it will cost you not more than some number of times as many pounds as the shillings you sue for; and restitution of the whole ten-and-sixpence, or of the four-and-sixpence difference, will or will not be ordered:[a] and so *toties quoties*, as often as you please.

There you see the power of parliament — there you see the effect of it, when applied with the purpose, entertained or pretended, of preventing extortion by, or in any way direct or indirect to the profit of, learned judges.

* *A fixed maximum.*] Each fee a sum determinate and *unincreasable?* Yes: if indeed *that* be the meaning, so far so good. But of those same unincreasable sums, suppose the *number* left *increasable, ad infinitum*, — increasable, at the pleasure of those whose profit rises in proportion to the aggregate amount of them; increasable, by means to the existence of which the noble and learned eyes were open, in the manner and to the degree that we have seen: and these sums accordingly, by those same noble and learned hands, put into the pre-eminently learned though not ennobled pockets; between which and the noble one there is a communication. Suppose this, and you will see in what way it is that, upon his Lordship's plan, "*all temptation to multiply forms*, and create delay and expense to the suitors" is to be removed. Moreover, here again comes the "*stimulus:*" for, whether *by* or *notwithstanding* such removal, "enough (their Lordships are assured) will be left as a fair *stimulus* to the *speedy* dispatch of business." For refreshment, preparatorily to this part of the speech, instead of an orange, presents himself here to my imagination his Lordship taking out of the learned pocket a bottle, and out of the bottle a good swig of *Lethe* water, to enable him to forget that, in the case of an office sweetened with emolument, as the office has, so has the patronage of it, a determinate value; and that this value rises, and that in a determinate proportion, with the value of the office.

Fixed or unfixed: — in one or other of these two cases must be the amount of this same *maximum* of this same *muriate of gold:* if fixed, off flies the *stimulus:* if unfixed, then flows in the *temptation* — that temptation, which, by men in the situation in question, always has been yielded to — that temptation, which, so long as man is man, will continue to be yielded to — that temptation, which, seeing all this, and seeing it so absolutely irremoveable, his Lordship is so determined to "remove."

† *Temptation.*] Yes: here we have *temptation* again. Already we have seen him stating what the temptation is — showing, demonstrating, and by uncontrovertible reasons, that it is one which no judge, nor any officer in an office subordinate to that of judge, ought to be exposed to; and thereupon, eyes wide open to the irresistibleness of it, and the mischievousness of it, comes the determination to expose them to it — to expose them to it, all of them, judges and their subordinates together: which said determination we have seen accordingly in his bill, now passed into an act, carried into practice.

Yea, verily; — here have we this same *temptation* again in this same speech, taken into consideration a second time — laid before their lordships and the public a second time; and the consequences of it a second time full in view; the determination a second time formed — the determination to expose his judges to it — his judges and their subordinates, — and thus to bring upon the whole country the evils so fully in his view — the evils of factitious expense, delay, and vexation, with their accompaniments, *denial* and *sale* of justice: — sale of it to the comparatively few —denial of it to all besides; that is to say, to the vast majority of the thus oppressed and plundered people.

But for all this evil, a compensation — a *per contra* — is now and in the same breath spoken of as provided: and by this same *per contra* we are to understand the evil to be overbalanced. And this same *per contra* — what is it? It is neither more nor less than a *stimulus;* namely, the old *stimulus*, which we have seen already, and which, for the present purpose, is, on the present occasion, again brought forward, — and, in that its former character, re-exhibited.

[a] In *Official Aptitude Maximized, &c.*, see *Indications respecting Lord Eldon*, pp. 359 to 362.

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removed, enough will be left as a *fair stimulus** to the speedy dispatch of business."

22d February 1831, *Mirror*, p. 415. — "These high incomes from fees are not confined to the Masters. Their *clerks* also have incomes averaging about £1600 a-year each: two have as much as £2500. There is only one who has as little as £1000, because, in his case, I think very properly, it was refused to allow any fees to be taken. I must own I look upon *those* '*gratuities*,'† as they are called, as in every respect most objectionable. If I were not disposed to adopt a circuitous mode of describing those sums, as gratuities for administering what is called *justice*, I should be tempted to call them by that brief but expressive name by which the public would call them — '*bribes*;' and I shall be able satisfactorily to prove them such to your Lordships. These *gratuities*, or whatever other name they deserve, are *not* taken by the *Masters*; I wish they were, as then the *high character* and station of the Master would prevent the imputation, that for such things *justice was sold* in one of the highest of our courts. I could wish that, even in *that* case, the *temptation* did not exist; but, in practice, the taking them by the Master would not have the same bad effect as in the case of the *Clerk*."

Page 417. — "You do not do so in other cases: — in the Court of King's Bench, for instance, you pay the judges out of the consolidated fund. It may be correct to take these fees from the suitors, to levy on them all the expenses of the proceedings; it may be proper to make Chancery suitors pay the judge on the Bench, and pay the expenses of the Chancery Court; it may be right that the suitors should be taxed — all this I will admit;‡ but then I contend that no more

* *Fair stimulus.*] Yes; sure enough, here we have another old acquaintance — a very old acquaintance. It has now, however, received a considerable improvement. In the former instance, on the former occasion, it was a "little" one; that was the best and the most that could then be ventured to be said of it. The time being (it seems to have been thought) come, the epithet *fair* is applied to it, and with this polish put upon it, it is presented to us for acceptance: and such (it seems) is its virtue, and so ample the service it always has rendered, and never will fail to render to justice, that the good effects of it are regarded as overbalancing, as just mentioned, all the evil ones apprehended from the *temptation* in conjunction with which it is now mentioned.

The case (as we have seen) is — that, for the measure in question — namely, the establishment of the mode of remuneration thus (as we have seen) exposed by his Lordship — for this measure, composed of the real evil, and the imaginary good by which that same evil is supposed to be overbalanced, he has now (you see) if you will believe him, found a *bottom*. By this *bottom* (it must be presumed) what is meant is a *justification*. The justification being thus pleaded, it would be injustice not to exhibit it: here accordingly it may have been seen exhibited; and of the *breadth* of this *bottom*, if such it be, we have, as above, been taking measure.

Good heavens! (says somebody) what a pother is all this! — all about a word — a single word! True: a single word; but, once more, think of what importance it is — this same word! Before you, you see a man to whom, in eloquence and deceptive language, scarcely does the whole country contain any known rival — this man you see calling forth his matchless powers — whatsoever of them he can muster — and employing them in support of this inexhaustible source of human misery — the practice of denying and selling justice — selling it to the tens of thousands, denying it to the millions, and thus devoting the millions to wrong without remedy: and in this one word is contained the whole of what the vast arsenal of his resources can furnish for the defence or so much as the palliation of the enormity: this considered, a few lines, or even pages, can they be grudged or justly taxed with superfluity?

† *Gratuities.*] Confounded, in a manner, with fees, are these same gratuities — we see how. After speaking of "*fees*," he immediately after, without having noticed any distinction, says "*these gratuities*." Things in themselves so different, how came they here to be thus confounded? Foul as is the abuse of fees so extorted, as has been seen, — still fouler is the abomination, to which the name of *gratuities* has been attached. In the case of a fee, the quantum is fixed; in the case of a gratuity, it is unlimited: *predeterminate* limit it has none; limit it has none but that which is determined in each *individual* instance: determined, and, by what? By the *need* which the suitor has of the services of the functionary; that is to say, by the *evil* which it may happen to him to be afflicted with, if, at the time in question, those same services fail of being performed: by the amount of this *evil*, coupled with the *tempers* of the two parties — namely, on the one part, the degree of hardihood; on the other part, the degree of timidity. From one and the same solicitor, a bold functionary will exact any number of times the amount that a timid functionary would: from a timid solicitor, one and the same functionary will exact any number of times the amount of what he could from a resolute one: the *solicitor*, I say, rather than the *suitor*; the case being — that, throughout the whole field of regular procedure, matters are in such sort arranged, that, for the suitor to see to his own business — to look after, and take care of, and make provision for, his own interest, — is impossible: the hands in which the care of it is lodged being those of a set of other men, in confederated swarms, of each individual of which the interest is, on each occasion, in relation to that of the *bonâ fide* suitor, in a state of diametrical and constant opposition.

‡ *Admit.*] Somewhat wide admissions these. However, if given no otherwise than hypothetically, and for the purpose of the argument — not categorically and absolutely — let them pass. Let them not, however, pass unheeded — these grievances thus lightly dealt with; look at them a little more attentively.

1. Grievance the first — *Taxes on justice*, or say *law taxes*, in the shape of *stamp-duties*. For receiving on their shoulders a portion, whatever it be, of the burthen laid on the people for the aggregate of the expenses of government, — selection made of the individuals already suffering

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should be taken from the pocket of the suitor than goes to pay the expense of the court and judge. Instead of this, however, I recommend you to make the judges of the

under a particular affliction, in preference to those who are not suffering under any such affliction: the amount of this burthen varying, in unknown quantities, upon a scale of such length, that, in an unascertainable proportion, the victims even sink under it, and are completely crushed. Would you be consistent? To these same objects of your oppression, add then the lame, the blind, the maimed — and those afflicted with the rheumatism, the gout, and the stone; and, for further consistency, if these be not enough, the orphan, the widower, and the widow, for and during the first year of mourning: all this for the purpose of keeping off the burthen from the members of the community at large, on whom, when distributed among them, it would lie but as an impalpable powder, the pressure of which would be altogether imperceptible.[a]

2. Grievance the second—an *abuse*:—taxes on justice in the shape of law fees. Persons selected for the being subjected to the burthen, the same; the produce carried to the particular account of the expense employed in the remuneration of judicial functionaries; some rendering more or less service, some rendering none. Distinguished from and above the before mentioned is this second tax, by its capacity of being augmented — we have seen how — augmented to the utmost — by those whose interest it is so to augment it, and who, accordingly, to the power add constantly and on each occasion the inclination, the determination, and the endeavour so to do. To the burthen imposed, as above, by the *legislature* in the shape of *stamp duties*, augmentation cannot be made by any other hands than those of the legislature. To the burthen imposed, as above, by *judges*, for their own benefit, augmentation can be made — made to an unlimited amount, and accordingly has been made — by the hands of those same judges; and of course, unless and until the power of so doing is taken out of those same learned hands by the legislature, will continue to be made.

Not uninstructive is the mutual relation and difference between the two grievances.

Nor should we here forget a vulgar error — an error which has been laid hold of, and converted into a fallacy by those who profit by it. According to them, *taxes upon justice* (not that this is the denomination employed by them) — taxes upon justice operate (say they) as all taxes do, in the way of *prohibition*, and thence in that of prevention: litigation is a bad thing; they operate, and in proportion to their amount, as preventives to it: they are as *bridles* in the mouths of the litigious. So says error: what says truth? That these bridles, supposed to be put into their mouths, are arms put into their hands; that is to say, if, and in so far as, under the appellative of *litigious* you include him who in the burthen beholds a means of obtaining for himself an undue benefit, by giving effect to an unjust demand, or by depriving of effect a just one.

Not that they are not *bridles*: too true; bridles they are;—but on whom? On whom but the poor man, who, by the rich man, has been fixed upon as his victim? On him they are not merely *bridles retarding* his motions; they are *ropes*, by which his hands are tied behind him, his feet tied together, and all possibility of defending himself wrenched from him.

Taxes upon justice — checks upon litigation! Such being the doctrine,—read, mark, and learn, who the doctors are by whom it is propagated. They are the dishonest non-lawyer, and his ever-ready accomplice the fee-fed lawyer: the non-lawyer, who beholds in them, and finds in them, an instrument, applicable, and with certainty of effect, to the purpose of cheating his *creditors*; or on pretence of debt, wrenching property out of the hands of men who are *not* his *debtors*: — the lawyer, to whom every non-lawyer is what a sheep is to a wolf; and every brother-lawyer, what a wolf is to a wolf of the same herd.

By the lawyer, however, a distinction is of course noted — the distinction between the law-taxes imposed in the shape of *stamp-duties*, and the law-taxes imposed in the shape of *fees*. The stamp-duties he will probably not be averse to the abrogation of; on the contrary, he will rather be desirous of it: for, the greater the defalcation from the aggregate of those which are expenses from which he does *not* derive profit, the more is left in the pocket of the suitor to be employed in that same suit, and in any other suits from which he *will* profit. In so far as he contributes to the removal of these bars to justice, he will exhibit an apparently good title to the praise of *disinterestedness*: he will wear the face of a law reformist: and, in that character, he may look for more or less of that public confidence, by which he will be enabled, with more or less effect, to act in the character of an adversary to law reform.

So likewise even in regard to those taxes, the produce of which flows into the common pocket of the profession; so many *divisions* as that receptacle contains, so many groups of profit-seekers, from each of whom law reform may receive support at the expense of the others, and without loss to himself.

By the *barrister* class, for example, may be advocated reforms by which defalcation will be made from the profits of the *solicitor* class; by the common-law barrister, from those of the equity class; and *vice versâ*. So again, as between speaking barristers and the various sorts of mutes called *chamber counsel*. In the power of any of these it may be, without any considerable real sacrifice, not only to profess themselves reformists, but even to act as such, and thus exhibit the appearance of disinterestedness.

To the author of these pages, at various times, advances have been made by learned gentlemen, with whom he had not the honour to be personally acquainted; and, of the truth of the above observations, he finds, in every such civility, exemplification and demonstration. Fre-

[a] Of the above-mentioned arrangement, the mischievousness and blindness were demonstrated six-and-thirty years ago — demonstrated anno 1795 — in *Protest against Law Taxes*, by the author of these pages; and taken off in pursuance of it was a considerable part of that portion, the produce of which, under the name of *stamp duties*, goes to the public revenue for all purposes, and could not be increasable by judges; this taken off, while the whole of the portion here in question — namely, that which has for its purpose the paying the judges, and which is increasable by those same judges, and to an unlimited amount, to and for their own benefit, was left on.

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Court of Chancery an annual ample allowance, and to discontinue the present clumsy unjust method of raising from the public and from the suitor three times as much as would pay the one Master and the one Master's clerk, which are all that are necessary; while, by doing which, you reduce the Masters to the positive necessity, in these matters, of increasing the expenses: — not that I blame the Masters, — I blame the system.* My Lords, these form the bulk of the changes which I contemplate effecting; and I have only shortly to refer to what I hope will prove to be the benefits to result from their operation; and these are, — a better decision of causes — a more full possession by the creditors of bankrupts' estates — a more speedy administration of justice to such creditors, and to all persons interested — a great diminution of business and delay in the Court of Chancery — and even eventually, probably, the saving of one of the judges in that court."

22d February 1831, *Mirror*, p. 419.— "I beg to remind your Lordships that if I have cut off seventy places from those in the dispensation of the Lord Chancellor, *I have also cut off* £7000 *or* £8000† *a-year from* his emolu-

Frequently is the observation made, that already, even among *lawyers*, there are, and in increasing numbers, *law reformists*: but, if true — as beyond doubt it is — small indeed should be the extent, in which it is expected so to be; otherwise than subject to limitations and exceptions such as the above.

An example — everybody sees how illustrative as well as illustrious an one — may be seen, even in the instance of his noble and learned Lordship. Exemplary has been his devotion to that one of the infernal deities whose name is *common law*; strenuous his exertions to garnish the pockets of her votaries with prog, picked out of those of her sister *equity*. Witness, *speech* of 1828: witness again the *local courts bill*; with plan and speech touching and concerning the same. For this phenomenon, would you find an explanation? Forget not to consider, that at neither of these epochs were the Seals in immediate view, and that the learned labours continued still employed, moulding into the bespoken shape the contents of the wonder-working "box."

So long as he is *man*, thus will *man* comport himself: to be angry with him for so doing, is to be angry with him for existing. But where, and so far as, a man's endeavours are in opposition to the welfare of the community, will any one say, that by his not being a proper subject for anger, the need of a defensive force for its protection, as against them, is in any degree diminished?

"Right . . . . to make the suitors pay the judge on the bench, and pay the expenses of the Chancery Court." Yes: those suitors who have wherewithal to pay, though it be their uttermost farthing. Well: but those of them who have no farthing at all; whether the suit found them thus destitute, or took it from them; these men, how are *they* to be made to pay it? No: to them justice is *denied*; to them, imprisonment is given in its stead: while, to those who have wherewithal to pay for it, "what is called justice" (to use his Lordship's so apt expression) — that same drug is *sold*, and continues to be sold, so long as they continue to have wherewithal to buy it — sold by, and for the benefit of, the judges and the swarms of other lawyers.

* *The system.*] Just twenty years ago — namely, anno 1811, in the work intituled *Théorie des Récompenses*, by the author of these pages, this same *system* was "*blamed*," if exposure of turpitude is "*blame*." The system? Yes; and the said *Masters* into the bargain, — if calling men, and proving them to be, extortioners and swindlers, is blaming them: — blamed by him were system and men together; and thus freely, his eyes not being sharp enough to descry any such necessity as that which, to the noble and learned eyes, is thus manifest. Could they even have prevailed upon themselves to abstain from this mode of *swindling*, there would still have remained to them the faculty of increasing their emoluments *ad infinitum*, as above; there would have still remained to them, for example, the faculty of effecting the extortion of the sum of £570, in payment of a man's name put by him to a paper without looking at it; an extortion, the fruit of which is continued to be fed upon in full security.

Swindling? Yes; *swindling*; that is to say, "obtaining money" (as the statute words it) by *false pretences*: pretence *here*, that of having done this or that piece of business, which, in fact, had not been done: *attendance*, for example, averred to have been paid, at a time when no such attendance was paid — no such business, nor any business at all, on the occasion of or in relation to the suit in question, was, by the functionary in question, done. Before the public, ever since the year 1802 — before the public, now for these twenty years, has been a work, in which this abomination is painted in its appropriate colours. *Desert* is a term, in relation to which I have on several occasions observed, that though it is with propriety coupled with *reward*, it is not with propriety coupled with punishment: if, however, it be assumed to be properly coupled with punishment, punishment has been still more richly *deserved* by every man by whom that office has been occupied, than by any other sort of man to whom, in speaking of him, the appellative of *swindler* was ever applied: the swindler — a malefactor to whom, by the so-often-referred-to statute, punishment by fine, imprisonment, pillory, whipping, or transportation, was applied; — those several punishments, one or more of them, at the option and discretion of the judge.

Thus then stands the matter. *Disease*, a complicated case — extortion coupled with swindling. Remedy, as prescribed by the noble and learned doctor, *powder-of-post*.

Well: no longer (suppose) by the clerk are they taken, those same fees — no longer by the *clerk*; but according to prescription (prescription by the noble and learned doctor) by the *Master*. Good: and what then? Why — that in the course in question they will keep going on — these same Masters: these same Masters, with their "*high character*," and in their "high station;" going on, as they did in 1811, and have done ever since, unless by any very recent arrangement, unknown to me, it has happened to them to be stopped.

† £8000 *a-year.*] Whence this same sum of £7000 or £8000 a-year is to come, is what I am utterly at a loss to conceive.

Among the House of Commons papers of the last session is one numbered 314 — date of the

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ments: *his emoluments arising from bankruptcy* amounted to the sum of £7000 or £8000 a-year, every farthing of which will be cut off by the bill I am about to introduce."

What has been seen, belongs to the account of *regularly* received benefits. Now as to the sort of benefit *casually* received, in the shape of *patronage*.

22d February 1831, *Mirror*, p. 417.—"First of all; there will be an *immense reduction of official patronage;* the scheme will convert *seventy* places, at present in the gift of the great seal, into *ten*."

Page 418.—"But, if *twelve* be not too many—and they have to examine evidence, and perform many other important duties—and if *two Masters** ought to be added, we shall cut off *seventy offices*, and have an increase of *eleven*. We shall cut off seventy *small* offices, and we shall have a remainder of eleven large ones.

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order for printing, 8th October 1831—intituled "BANKRUPTCY FEES. No. 2. An account of all sums of money paid by the clerk of the Hanaper to the Lord High Chancellor, in each of the three last years."

"The Lord High Chancellor," it goes on to say, "receives from the Hanaper office certain payments and allowance under his Lordship's patents, which amount in each year to the unvarying sum of £1096 19 0

"Deduct Hanaper fees, . . . 10 19 6

"Net sum paid to the Chancellor, £1085 19 6"

Lost am I here in astonishment!

This same sum of £1089 : 19 : 6,—is it not the whole amount of the emolument which in a return called for by the House of Commons, is stated as being derived from the source in question—the bankruptcy business? This the amount really given up by his Lordship, and by his said Lordship £8000, or at the least £7000 a-year, asserted to be the amount given up by him? an error, on such an occasion, to such an amount, and in such a proportion? and this in a matter to which his attention had thus pointedly been called for and directed?

Can it have been of anything less than the whole of the emolument derived from that source that this order calls for, and accordingly the return obtained by it contains, the statement? True it is, that the *Hanaper office* is the only source from which the information is called for; but, had there been any other such sources, would not they have been, all of them, included in the order, and consequently in the returns? Of any such order, what could be the object?—what other than the ascertaining and bringing to light the whole of what the office filled by this high functionary was deriving from this part of the business of it? This—is it a sort of matter that could either have escaped his notice or his memory?

For the sake of round numbers, or from the hurry of debate, an error of a few per cent.? Yes: but an error of 6 or 7 hundred per cent.? an error of such magnitude in the conception entertained by a man of his own income? Not less distinguished for the liveliness of his imagination, than for so many other brilliant accomplishments, is the noble and learned Lord: but an imagination that could carry a man thus far above the truth—is it not strong enough to carry him aloft upon the wings of it, till, as Horace in a certain case looked to do, he ran bump against the starry firmament?[a]

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[a] Apprehensive of the guilt of misrepresentation and injustice, I have hunted out a report made in a former year—a report having for its subject-matter the aggregate of the emoluments received by the Lord Chancellor, in the chancellorship of Lord Eldon. In it I find what follows: date of order for printing, 12th April 1827; No. 265; general title, "Bankrupt Fees. Returns and account of receipt and appropriation of fees in bankruptcy." Particular account, pp. 12 to 17, both inclusive:—"3. An account of *all* fees received by the Lord Chancellor's pursebearer, from *the* different branches of bankruptcy business, in each year from 1811 to 1826; distinguishing the specific appropriation thereof."

In page 12, at the end of the account of the first of these years, namely the year from "April 1811 to April 1812," comes a statement in these words and figures:—

	£	s.	d.
"Total received for the Lord Chancellor, subject to the deductions of a proportion of the salary allowed by his Lordship to his purse-bearer, which, according to the amount of other business, in the purse-bearer's account, is	933	16	6
	250	0	0
	683	16	6"

In page 16—in these same annual accounts, the year in which the mass of emolument is at its *minimum*, is the year intituled April 1824 to April 1825; and in that year it stands thus:— £651 0 0

Deductions as before stated, . . 250 0 0

£401 0 0

In page 17—in these same accounts, the year in which the mass of emolument is at its maximum, is the year intituled April 1826 to April 1827; and in that year it stands thus:— £1390 14 0

Deductions as before stated, . 280 0 0

£1110 14 0

N. B. The substitution of this £280 to the preceding £250 wears the appearance of a clerical error.

Amount of this emolument upon an average of the two years, ... £755 10 3

Whether, by this last account, my astonishment can have been lessened, the reader will judge: for, on adverting to it, the amount declared in proof of disinterestedness, turns out to be, instead of the 5 or 6 times, about 10 times as great as the real amount. At the time of this speech of his Lordship's, at the making of which the magnifying glass through which he looked at the sum, had swollen it to the £7000 or £8000 a-year, the average was no more than this same £755 : 10 : 3. As to the £1065 : 11 : 6, which was the amount of it in the year 1831, he could not, at that time, have known anything of it, unless he had himself caused it to be taken, and had it before him in manuscript.

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* *Two Masters.*] This bears reference to another job, which seems to have been abandoned.

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"Your Lordships will not suppose that these two descriptions of offices are the same; for a *man who delights in patronage*, who wishes to indulge *kindly feelings*, *seventy small offices* are much more *convenient** than *eleven large ones*. He can give away the seventy small ones among his friends; he can oblige† a colleague with one; but he cannot, he dares not, make a judge of a man who is *incompetent*;‡ he dares not go himself into a court, over which he has placed an unfit person.

"At present, the persons who are made judges are not made by favour; they are not obliged by the choice, and God forbid that they should hold their office by any other title.

"Thus, by this arrangement, seventy places are lopped off from the patronage of one of the ministers of the crown. Great diminution will also take place in other departments of the court, in addition to those which I have named; but, wishing to understate the advantages of the plan, rather than indulge in any exaggeration, I omit them for the present. By my propositions, delay will be abridged, decisions improved in quality, and their dispatch promoted, and expense will be considerably lessened, going even upon the bare supposition that nothing finds its way into the pockets of suitors, except the saving resulting from the abolition of fees."

22d February 1831, *Mirror*, p. 418.—"It is quite clear that these parties, who are compelled to contribute the heavy expenses which arise out of chancery suits, are the last persons whose interests, as connected with the pecuniary cost of legal proceeding, has been yet consulted. The total saving in one branch of the bankrupt department will be £6000 a-year; the expenditure in the office of *secretary of bankrupts* being reduced from £9000 to £3000, and the whole reduction, in all departments connected with bankrupt affairs, after due provision for the new court, amounts to £26,000* a-year net *saving of fees to suitors.*"

22d February 1831, *Mirror*, p. 419.—"But it may be said—Oh! you are taking great pains to reform the expenditure of this court, but you are taking excellent care to keep the chancellorship to yourself, for nobody competent to fill the office will take it, with the reductions you have made in it.

"Very well: but is it to be supposed that I should have consented to give up the money arising from my professional exertions, and consent to support the burthen of the peerage, if I was not to take some fair chance of compensation? My Lords, I could not afford to do it. . . . . .

"Permit me, however, to add, my Lords, first and last, once and for all, that if I suggested any increase of the emoluments of the Great Seal, I would rather add to the retiring pension† of the Lord Chancellor, than I would augment his working salary."

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* *Convenient.*] A convenient word this same word *convenient*. Where the purpose is deception, proportioned to its obscurity or ambiguity is the convenience of the diction employed in speaking of it. Pride, on this occasion,—the pride of the candidate—speaks more plainly. Where the emolument attached to the situation bears so small a proportion to the value of the time and labour necessary to the performance of the duties of it, and at the same time affording the minimum of the provision capable of enabling a man to keep up an appearance suitable to his station in society, without affording wherewithal to support a family, in such sort that the gift of it would scarcely be regarded as a favour, it will not sell for anything; where it rises to a certain elevation, it will fetch as much as an annuity, clear of all burthen in the shape of service. Of a living, the income of which is not greater than that of a curacy, the advowson will not sell for anything: while, of a living which is rich to a certain amount, the advowson has been known to sell for as much as 14 years' purchase. In military offices, moreover, the like proportion has place. An ensignecy of foot, pay 5*s.* 3*d.* a-day, sells for no more than £450; while of a lieutenant-colonelcy, pay 17*s.* a-day, no more than about three times as much as that of the ensign, the regulation price is £4500—ten times as much. The increment added by this circumstance to what his Lordship, with his disinterestedness, gains by the change, might be proved and expressed in figures, were it worth while. Source of these statements, information obtained from an official accountant.

† *Oblige.*] By his commissionerships of £1500 a-year, his judgeships of £2000 a-year, and his chief judgeships of £3000 a-year, his Lordship can "oblige" persons so high in rank, influence, and capacity of *obliging* him, that they would not have accepted of any of the abolished commissionerships, with their three or four hundred a-year.

‡ *Incompetent.*] Howsoever, in this respect, the case may be with a hypothetical Lord Chancellor, in regard to an actual one, if in what I have heard from various quarters there be anything in any degree well grounded, the case is in no inconsiderable degree different. Of the four judges, against one in particular the outcry, on the score of inaptitude, is, if I am not egregiously misinformed, loud and extensive.

* £26,000.] As to this sum, evidence other than as above, none: and of the *new* fees established, unbounded and ever increasable as is the amount of them, nothing said. For the real amount, see below.

† *Retiring pension.*] The more rapidly the lord high jobber drives on his course with his learned job-horses, the nearer will be the thus contemplated fall of this modern Phæton upon his bed of down—the retiring pension,—and the greater the importance of any addition made to it.

When the service of fighting and subduing their opposition Lordships has been accomplished, the unpopularity which, by that time, will have thickened round him, will have impressed his colleagues in the cabinet with the necessity

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14th October 1831, *Mirror*, p. 3053. — "The Lord Chancellor..... I cannot help observing, that I have heard with really great concern, that some *imputations* — I will not say imputations, for I hope I may consider myself above imputations, — but that some *cavils* * have been raised, *out of the House*, with respect to my *motives* in bringing forward this bill; and I regret the more sincerely that such *cavils* should have been raised, because they have been entertained by persons for whom I am bound to pay every respect, and particularly by *one* person — a gentleman of great learning, a personal friend of mine, — a man of extraordinary learning; the father of the English Bar, and the father of law reform.

"And he says, that the *anxiety* which I have evinced (and which I still feel) to pass this important measure, looks as if I were snatching at a patronage of £26,000 a-year, besides the patronage of the Great Seal.

"But this apprehension of my excellent friend arises, I must say, from a *total ignorance of my nature*, and I will add, too, of the *provisions of this bill*.† *I have only substituted for a patronage of* £35,000 *a-year, one of* £18,000.‡ In addition to this, *I have surrendered the patronage of two sinecure places of* £12,000 *or* £14,000‖ *per annum*; so that, *by the operation of this bill, there is a great diminution of the patronage and advantages now belonging to the Keeper of the Great Seal.*"

Now again for a battle — a second battle — between the principle of *single-seatedness* and that of *many-seatedness*. Scene of action, the *commissioners'* court: problem to be solved — in what cases, or say on the occasion of what *sorts of business*, is employment by this bill given to commissioners acting singly — in what other cases, or on the occasion of what other sorts of business, is employment given to commissioners in numbers greater than one, — that is to say, two to six inclusive. Sections on this occasion to be looked to, in the first edition, § 6, 7: so likewise in the second edition, in which they are the same, word for word.

1. Look at § 6. "The said six commissioners," it says, "may be formed into two subdivision courts, consisting of three commissioners for each court:" after that, it says, "and all references *or* adjournments (meaning probably *and* adjournments) by *a single* commissioner to a subdivision court, by virtue of this act, shall be to the subdivision court to which he belongs, unless," &c.

Here, if only by implication, at any rate beyond doubt, we have a single-seated court authorized.

2. Look now at § 7. "In every bankruptcy prosecuted in the said court of bankruptcy, it shall.... be lawful," it says, "for any *one* or more of the said six commissioners" to do so and so: "Provided always, that no *single* commissioner shall have power to commit," &c. "otherwise than," &c.

Here, then, we see authorized single-seatedness, double-seatedness, treble-seatedness, quadruple-seatedness, quintuple-seatedness,

of giving him his quietus, and consigning him to his thus anticipated retirement. The sense entertained of the retardation opposed to parliamentary reform by the job here in question, can scarcely have failed to hold up to the view of the public, in the proper colours, the expediency of such a measure.

* *Cavils.*] By *cavils*, seems to be commonly understood ungrounded and groundless censure. How far it is in the present case applicable, the reader will already have been in some measure enabled to judge.

† *Ignorance of this bill.*] If, for the provisions of this bill, anything like an apology be to be found, the reader will judge whether an ignorance of the substance, qualities, and probable effects of it, on the part of all concerned in the drawing of it, but more especially of the noble and learned draughtsman at the head of them, will not constitute the least bad apology that can be found for it. Another point on which the reader is hereby requested to pronounce judgment, is — whether, to the removal of that same ignorance, some contribution has not been made by him, to whom this "total ignorance" is thus imputed.

In this same request may also be included the article of "*motives*" By a man who is not in the habit of looking into his own mind, the motives from which his conduct derives its direction are frequently not so correctly or comprehensively understood as by by-standers. In these observations, if his Lordship will be pleased to continue his researches in this view, he may perhaps find a sort of microscope by which that operation will be more or less facilitated.

‡ £35,000—£18,000.] Whether in these figures there be not some considerable errors of the press or of the pen, is another point on which the reader will presently be in a condition to pass judgment.

‖ £12,000—£14,000.] Magnificent indeed is the show made by these figures. But this large cob-nut has been cracked, and the kernel has been found wanting. I could not but suspect as much; and, by a publication which has made its appearance while these pages were writing, this suspicion has been pretty well confirmed: * from which the true value appears to be = 0: to which, perhaps, may be substituted x; if x be taken for a very small number.

As to the above acknowledgments, the candour and good feeling displayed by them is such as would be matter of astonishment from any person but the best good-tempered and good-humoured man that was ever seen in that high office, not to speak of any other: but, intimation has been already given, that somehow or other so it happens, in such sort is my stomach constituted, that not even in this shape of such trebly refined sugar, can anything in which the taste of a bribe is perceptible be swallowed by it.

* *Legal Observer*, October 22, 1831. p. 326.

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and sextuple-seatedness: six different courts for the more effectual exclusion of "uncertainty," as promised in the preamble.

3. Look now at § 13. "Every fiat prosecuted in the said court of bankruptcy shall be filed," it says, "and entered of record in the said court, and shall thenceforth be a record of the said court: and it shall thereupon be lawful for *any one or more of the commissioners* thereof,"—(namely, of the court of bankruptcy, in which are these six commissioners, it seems, as well as the four judges)—"to proceed thereon in all respects as commissioners acting in the execution of a commission of bankrupt, save and except as such proceeding may be altered by virtue of this act."*

4. Look to § 20. "It shall be lawful," says the bill, "for *any* commissioner who shall make any adjudication of bankruptcy, to appoint two or more meetings instead of the three meetings directed by the said recited act,† for the bankrupt to surrender and conform, the last of which said meetings shall be in the forty-second day by the said act limited for his surrender.‡

5. Look to § 21. "In all cases," says the bill, "in which power is by this act given to *any one* of the said commissioners to act, such power may . . . . be exercised by the said chief judge, or by any one of the said other judges: and where any such judge so acting would, in case he were a commissioner,* make any reference or adjournment to a subdivision court, such reference or adjournment shall be made by such judge to the court of review, instead of to a subdivision court."

Here again may be seen single-seatedness; single-seatedness mentioned, many-seatedness not.

6. Look to § 22. Place and words the same in both editions. Subject-matter, official assignees. Here again may be seen, it is true, *many-seatedness* in all its nine degrees; but not the less true is it, that so also may be seen *single-seatedness*. "The proceeds in question," the bill says, "shall . . . . be possessed and received" (possessed before they are received) "by such official assignee alone, save where it shall be otherwise directed by the said court of bankruptcy, or any judge or commissioner thereof." †

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* *This act.*] Yes: according to this act, at one and the same time, in relation to one and the same supposed act of bankruptcy, in two different justice-chambers, by two different sets of judges, the one subordinate to the other, one and the same set of proceedings is thus to be carried on; and these same proceedings are (it seems) to be *filed*, &c. in the office belonging to one of those same sets of judges — namely, the four judges of the court of bankruptcy — in that office alone; and thereupon "any one or more of the commissioners *thereof*," namely, of the said court of bankruptcy, of and in which, in one sense of the words *court of bankruptcy*, there are four judges, and no one commissioner; in another sense of those same words, there are also at the same time commissioners in any number not exceeding six, as also in the several numbers two, three, four, five, and six, who are "to proceed thereon," (says the bill and the act) and so forth as above.

Could any exercise be better imagined for the purpose of being translated into Latin verse for the instruction of Westminster school-boys in the art of poetry, as above proposed?

This, however, is an episode. Be this as it may, here again we have (it is true) many-seatedness in all its five forms: the said commissioners, whatsoever be the number of them, sitting in the laps of the four judges; of the said four judges, the three puisnes saying they are "*of the same opinion*" with the chief, and all four singing to the commissioner or commissioners, "Lullaby, baby."

† Note that, in neither edition of this bill, is there any such or any other act recited.

‡ In the second edition also, this same section stands twentieth, and is, without variation, in the same words. Here then we have a commissioner acting under the direction of an act which has no existence: much good may it do him; not to speak of the suitors. Here, and without doubt, we have single-seatedness: Yes—and *here* in all its simplicity and purity.

* Question here for argument: Judge, either the judge whose proceedings in the imagined case are to be guessed at, or some other and what judge or judges: question, what the said judge would do were he a commissioner? Not that, in this imagined case, there is anything of inconsistency or impossibility: for, though, as above, every commissioner is a judge, it is not true that every judge is a commissioner.

Be this as it may, here we have a most ample recognition of the principle of single-seatedness. Not only six justice-chambers do we see with a *commissioner* in each, but *four* other justice-chambers with a *judge* in each.

† Now suppose a different direction given by each of any two, or by every one of all these *ten* members of the court of bankruptcy — namely, the four judges who are not commissioners, and the six commissioners who are, and are not judges. What is to be the consequence? The unhappy wight — the official assignee — should he be, as he may be, pulled at the same time ten different ways, what is to become of him? Still greater would be his embarrassment than that of *Garrick* between *Tragedy* and *Comedy*, or *Hercules* in the print between *Venus* and *Minerva*: more nearly resembling would his condition be to that of a French traitor under the *ancien régime*, when pulled four opposite ways by so many wild horses.

After this, in this same section, comes a clause speaking of "such rule and regulation . . . . as the Lord Chancellor, or the said court of review, or any judge of the said court of bankruptcy, if authorized so to do by any general order of the same court." As to this same *if*, is it to both the subject-matters immediately preceding — namely, the court of review, or any judge of the said court of bankruptcy — or to the last of them alone, that it is to be understood to bear reference? Here likewise we have a recited act, a said recited act, which is not anywhere recited: so much the better for the official assignee, who, if it were re-

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7. Look to § 30. "Any *one* of the six commissioners may," says the bill, "*adjourn* the examinations of any bankrupt or other person, to be taken either before a subdivision court or the court of review, or, if need be, *before both courts in succession* . . . . and may likewise adjourn the examination of a proof of debt, to be heard before a subdivision court; which said court shall proceed with such last-mentioned examination."*

After that, in this same section, comes a proviso, "that in case, before the said commissioner or subdivision court, both parties . . . . consent to have the validity of any debt in dispute tried by a jury," (which, by the bye, they will not do, unless they are egregiously misadvised,) "an issue shall be prepared, under the direction of the said commissioner or subdivision court, and sent for trial before the chief judge or one or more of the other judges; and if one party only applies for such issue, the said commissioner or subdivision court shall decide whether or not such trial shall be had, subject to an appeal as to such decision to the court of review."†

Before this fruitful section is dismissed, another rather singular provision in it must not be left unnoticed. Not content with authorizing and requiring the judge or judges in question to "*adjourn*," or say transfer, the matter in question to a judicatory, at his or their discretion; it authorizes and requires them respectively to do this favour to two judicatories in *succession*, one after another; thus producing the effect of an *appeal*, whether the parties, or any one of them, is desirous of it or no; in other words, although

cited, might have to be charged with *interest*, with which, as the matter stands, he cannot be charged: and which, accordingly, the fault will be his if he does not pocket.

Note, moreover, that on this occasion the words are not, as elsewhere, *rules* and *regulations* in the plural, but rule and regulation in the singular: and thus it stands, not only in the first edition, but in the second also; and that, after revision made. Now then, as to this one *rule* and *regulation*. Suppose it made by a single judge of the court of review, what rule and regulation is there, power for the making of which is left either to the court of review in its *integrality* (*integrality*, not *integrity*) or the Lord Chancellor? And suppose that, by *every one*, or even any one of these functionaries, the one rule and regulation thus authorized has been made, what power is there left for the eventual amendment of it—for the amendment of it, whether in the way of subtraction, addition, or substitution? By the first exercise given to it, will not this same power be exhausted?

Moreover, as to these *rules* and *regulations*, when they are in the plural, what is to be done with them? According to § 1, they are to be "*established*;" according to § 11, they are to be *made*: according to § 22, rules are to be *made* (doing as well as they can without either *regulations* or *orders*;) according to § 34, "Rules and orders are to be *made* and *directed*:" and thus it stands in both editions: *they* are to be made, that is to say, in this section "*rules and orders*," by which (it seems but fair to presume) is meant the same thing with what (as above) is, in other places, meant by "*rules and regulations*."

Whatever thing it is you mean, how many times soever in the same portion of discourse you have occasion to mention it, be sure never to employ the same locution in the designation of it. A rule to this effect, though the observance of it has never yet been made obligatory by the positive enactment of a law of *parliament*, has, of late days, been made little less effectually obligatory by a law of *fashion*. In a speech spoken, or a paragraph in a periodical, it serves not any more important purpose than that of ornament. But, when conformed to in and by an act of parliament, it is of more substantial use; for, whatsoever be the number of times at which this decoration is employed, the same is the number of grounds on each of which a lawsuit may be erected, and appropriate remuneration for learned industry and ingenuity administered.

As to rules, regulations, and directions, rules and regulations are in use to be *made*, as also to be *established*; nor are they altogether unaccustomed to *direct*, and in this way to be *active*: but as to the being *directed*, and accordingly passive, *facts* (says the common aphorism) are *stubborn* things; and it seems questionable whether the like stubbornness may not be apprehended at the hands of *rules* and *regulations*.

* Here again the already-mentioned difficulty re-exhibits itself: this same operation, whatsoever it be, any *one* of these five commissioners (all of them at the same time members of the court of bankruptcy) may perform,—whatever may be done by the two, three, four, or five others to prevent it. As to *adjournment*: by *adjourn*, the learned draughtsman means (it may be presumed) *transfer*: the occasion on which *adjourn* is the term commonly employed, is when, the body being the same, the transference is of that same body to a meeting at another *time*, and at the same *place* or another *place*. But, for aught I know, precedents of employment given in this sense to the verb *to adjourn*, may have met the learned draughtsman's eye.

† Thus far the bill: so that, *inter alia*, should the question, such as it is, be decided upon, in the first instance, by the said three other judges, the appeal against such decision of these *same other* judges may be heard by these same other judges, sitting under the name of *the court of review*. The appeal will be from themselves to themselves, and will accordingly be heard by themselves.

In the law of procedure, in this provision, a new improvement, à la Brougham, is exhibited. An appeal from the Lord Chancellor to the House of Lords has long been understood to be (accident excepted) an appeal from his noble and learned Lordship in one place, to his said noble and learned Lordship in another place; but, how effectually soever *produced*, this mode of obviating *uncertainty*, though not without some relatively beneficial addition to *expense* and *delay*, has (it is believed) been authorized and established by act of parliament. It may accordingly be considered as an addition made to the list of the improvements, made or meditated by the noble and learned author of this bill, in the fabric of the law.

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it be against the desires of all parties interested:—"Any one of the said six commissioners," says the bill, as we have seen, "may adjourn the examination of any bankrupt or other person, to be taken either before a subdivision court or the court of review, or if need be, *before both courts in succession*, and may likewise adjourn the examination of a proof of debt to be heard before a subdivision court."*

8. Look to § 31. "If *such commissioner*† or subdivision court," says the bill, "shall determine any point of law or matter of equity, or decide on the refusal or admittance of evidence in the case of any disputed debt, such matter may be brought under review of the court of review by the party who thinks himself aggrieved, and the proof of the debt shall be suspended until such appeal shall be disposed of, and a sum not exceeding any expected dividend or dividends on the debt in dispute in such proof, may be set apart in the hands of the said accountant-general, until such decision be made; and in like manner there may be an appeal on the like matter of law or equity from the court of review to the Lord Chancellor."‡

9. Look lastly to § 32. In and by this section, the crown may be seen put upon the aptitude of *single*-seatedness; and not absolutely and merely is its aptitude recognised, but also the comparative superiority of its aptitude, in comparison of *triple*-seatedness and *quadruple*-seatedness. Look on till you come to the words "*one commissioner*," and then observe the feats which his commissionership is rendered capable of performing.‖

* Thus far the bill: a curious enough document would be the *formula* by which this appeal, without the name of an appeal—this appeal *in disguise*—this *quasi-appeal*, as it may be termed,—is ordered to be made; its place would be among the rules and regulations, or say rules and orders, so often spoken of.

Thus it is, that here again we have *single-seatedness*: and of the six commissioners, each one is, if he think fit so to do, issuing a different decree; making, on one and the same occasion, on one and the same point, in any number as far as six, different decrees, each of them contradictory to every other; on the supposition that, to this act, and to this clause in it, the execution called for by it is given accordingly: so that, should the money, say £50, be by commissioner A adjudged to Thomas Noakes, by commissioner B to John Stiles, by commissioner C to John Doe, by commissioner D to Richard Roe, and so forth, then, and in such case, the said Noakes, Stiles, Doe, and Roe, &c. will receive, each of them, the said sum of £50 to his own proper use.

To the quantity of the mass of *argumentation* capable of being extracted from this one section—to the quantity of *time* the said argumentation may be made to occupy—to the quantity of *money* it may be made to pump up out of the fund lodged in the hands of the assignees, official and non-official—to the *profit* capable of being extracted out of the said money, in the shape of remuneration for the services of learned judges, learned commissioners, and learned gentlemen,—who shall assign any limits, other than those of the said fund itself?—all for the more effectual minimization of *expense*, *delay*, and *uncertainty*, in fulfilment of the *promise* made in the preamble.

Note, moreover, that by the words of this clause, when the learned persons in question, be they who they may, adjourn the examination of any bankrupt or other person, he or they are to proceed—not with *that same* examination, but with the examination of a different matter; namely, *a proof of debt*.—Such is the mode of proceeding, for the carrying on of which the learned draughtsman has made provision, and with an anxiety the tokens of which are upon the face of the passage so conspicuous.

† Here again may be seen *single-seatedness*: witness "*such commissioner*."

‡ Note how in this section (which follows immediately upon the last-mentioned one,) lest the quantity of this pre-eminently necessary remuneration should not yet be sufficient, provision is made for *two* appeals: two appeals, one above another,—Ossa upon Pelion; namely, one from any or all of the six judicatories just indicated, appeal to the *court of review*: the other from the court of review to the *Lord Chancellor*: but, rich indeed must be the fund, if, after having been drawn upon by these drains which we have been seeing, there remain any very considerable pickings for his said Lordship, and his immediate subordinates, in his Court of Chancery.

‖ Appeals may, moreover, here be seen mounted one upon another in a pile, by which the tower of *Babel* will naturally be made to present itself to the mind of any person who has ever seen the elevation of it upon a Dutch tile.

"If the court of review," says the bill, "shall determine in any appeal touching any decision in matter of law upon the whole merits of any proof of debt, then the order of the said court shall finally determine the question as to the said proof." Having gone thus far, a debtor or creditor by whom the bill were perusing, would naturally expect and hope to find the course of plunderage at an end. Vain, alas! the expectation; for now comes in the pile of *appeals*, introduced by an *unless*: "unless," continues the bill, "unless an appeal to the Lord Chancellor be lodged within one month from such determination:" this month being interposed for the more effectual fulfilment of the promised minimization of delay and uncertainty. But, alas, once more! this is but the beginning of sorrows; for, "and in case of such appeal," continues the bill, "the determination of the Lord Chancellor thereupon shall in like manner be final touching such proof; but if the appeal either to the court of Review or the Lord Chancellor shall relate only to the admission or refusal of evidence, then and in that case the proof of the debt shall be again heard by the *commissioners* or sub-division court, and the said evidence shall be then admitted or rejected according to the determination of the court of review or the Lord Chancellor." Here the section ends.

Here, then, in the character of a security, an additional security, against misdecision, is assumed the propriety of an appeal from the Lord Chancellor; yea, even from the Lord Chancellor to a commission; to *any one* of the six commissioners, at the choice and pleasure of the party, or of *chance*, as it may happen. But, if expense,

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10. Look to § 40. No — the last preceding was *not* — this *is* — the concluding article: — the article by which a close is put to the list of the proofs given of the virtual recognition which, by the noble and learned advocate of *many-seatedness*, has thus been virtually made

delay, and uncertainty, be put out of consideration (and more completely put out of consideration they can scarcely be than they are in and by the whole tenor of this bill,) security (it must be admitted) can never be too secure. Here, then, is this same scale or pile of appeals, at the pleasure of any *one* of the parties (and, in particular, of any one of them whose plan it was to gain his point by exhausting the matter of fees from the pockets of the rest,) reproduced; and *this*, not once only, but *toties quoties*, till the exhaustion is completed; and thus may the original *repetend* be improved into a *circulate*, and, for the benefit of the learned, useful application thus made of mathematics to jurisprudence: and the tower of Babel turned, *toties quoties*, topsy-turvy, and then set right again, as in the case of an *hour-glass* with sand in it — an hour-glass, that formerly useful implement, so much prized by the wisdom of our ancestors, now so extensively supplanted by clocks and watches.

With incontestible propriety may these same *appeals in disguise*, alias *quasi-appeals*, be thus put upon a level with *appeals* commonly so called. Why so? For this plain reason: because in point of expense and delay, no difference is there between the one case and the other; and so long as the quantity of *money* taken out of the pockets of suitors is the same, and the quantity of *time* wasted is the same, what matters it what the name is which is given to the legal *operation* or *instrument* by which the evil is produced? the effect being the same, what matters it what the name is which is given to the cause?

Now then for the *scale*, or say *pile*, of appeals — these same appeals so called, and appeals not so called, put together. For shortness, let the name of appeal be given to each one of them.

1. Appeal the first we have had already; namely, by section 31 — Appeal from "such commissioner or subdivision court" to "the court of review."

2. Appeal the second (by sections 31 and 32) — from the court of review to the Lord Chancellor.

3. Appeal the third (an appeal in disguise) — Appeal from the Lord Chancellor to the commissioner (the *single-seated* commissioner) or subdivision court, by whom or which "the proof of the debt," says the bill, shall be *again* heard.

4. Appeal the fourth (another disguised appeal) — Appeal from the commissioner or the court of review, to that same court of review. Appeal, *ab eodem ad eundem*, as above noticed.

5. Appeal the fifth (another disguised appeal, disguised under the same cloak as appeal the fourth) — from the court of review to the Lord Chancellor.

6. As yet we have but five appeals *declared*, or say appeals *patent*; but a sixth disguised appeal, or say an appeal *latent*, if not a *seventh*, may be discovered in the words "*commissioner or subdivision court*;" for, in a former section, namely the sixth, may be seen established an appeal from every single-seated commissioner to a subdivision court; and, in another, namely section the third, from every subdivision court to the court of review, from whence, as above, lies the appeal to the Lord Chancellor.

of the aptitude — not to say the superior aptitude — of *single-seatedness*. After what has just been seen, this progress (it must be acknowledged) is but an anticlimax: but the list — the whole list — having been undertaken to be given, will naturally have been expected to be seen, and without production of disappointment could not be left uncompleted.

This section has for its subject-matter the case where a bankruptcy, being by the act found lying under the cognizance of the existing commissioners, is transferred to that of the five new courts now instituted. To the six commissioners, each of them singly-seated, are (it will be seen) in and by this section, given the two powers following: — 1. Power the first — "power to appoint," says the bill "some one of the aforesaid official assignees to act with the existing assignees;" 2. Power the second — "power to direct," says the bill, "the existing assignees to pay and deliver over to such official assignees" (in the plural) "all monies, &c." Thus far the bill. But *direction* is one thing, *compliance* is another thing; and suppose that in consequence of such direction compliance has not place, what then is to be the result? *Answer*: Exactly that which for the remuneration of learned labour is to be desired. *Motion* will have to be made in the appropriate court, say the *single-seated* commissioner's court — motion to *show cause* why the said monies, &c. are not so paid and delivered over: which motion, being there decided upon, may or may not be carried upwards, or upwards and downwards, into the scale or pile of *appeals* above delineated; and thus it is, that to that pile which can never be too high — namely, the pile of remuneration for the services and merits of noble and learned lords and gentlemen — a correspondent addition will be made.

As it is with Hogarth's prints, so have I found it with this, if not inimitable, let us hope never-about-to-be-imitated bill: look as often as you will — look again — new interesting objects will you find in it: till this day (October the 19th,) not more than five judicatories had I observed to have been established by the bill, in lieu of the two which it found in existence. On looking into a section which had escaped me, — namely, section 5th, I find by it another judicatory added; namely, that of a Master in Chancery: Yes, that of a Master in Chancery; and so far so good. But does the matter end there? Oh no: for, from the decision of his Mastership lies of course a virtual appeal, — under the name of *exceptions* to his report, — either immediately or through the medium of the Vice-Chancellor, to the Lord High Chancellor in his quality of Supreme Judge (save and except the House of Lords) in matters of equity; so that thus we have not one only,

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but three more stages of appeal. "All costs of suit," says § 5, "between party and party in the said court of review shall be at the discretion of the court, and shall be taxed by one of the Masters of the Court of Chancery." All costs of suit? and to the sum of these sweet things, what limit is there that can be assigned? By the blessing of God upon learned industry, to thousands of pounds in any number may these same costs be made to amount: and out of the stakes constituted by the bankrupt's assets, and played for, as a pool of fish at *Pope Joan*, by noble and learned lords and gentlemen — out of this fund and no other shall these costs be taken? *Semble que non:* and if not, then by the creditors, in lieu of the so much in the pound to be *received*, comes so much to be *paid*.

So much as to everything that has any immediate application to the particular matter here in question; that is to say, to the merits and demerits of the bill, now passed into an act. But, in the course of this inquiry, has unavoidably been started another question — no less than whether, under the present head of the law, as between *melioration* and *deterioration* of the whole mass taken together, deterioration is not of these two opposite results unhappily the most probable. Now then, important as is the principal question, still more so (as everybody sees) — incalculably more so — is this collateral one. To him, so long as he continues in that highest of all high law situations — to him belongs, so far at least as concerns *prevention*, the attribute of omnipotence. Without his concurrence — or at least permission — for no melioration, to any considerable extent, can be seen any chance: for no melioration worth mentioning, much less for an all-comprehensive one.

Of any beneficial effect, the production, so far as it depends upon him, depends upon the conjunct existence of two states of mind — *inclination* and *ability:* and, if inclination be absent, *ability* — all the ability imaginable — will be of no use. If it be by an interest opposite to that of the community that his conduct is guided, inclination will be — not on *that*, but on the opposite, side. Disinterestedness, as the word is commonly understood, is the quality, not of him whose conduct is not determined by any interest (for that would be a mariner whose vessel never sails but in a calm,) but of him who, on the occasion in question, is *not* under the guidance of any interest opposite to that of the community at large: to the possession of this quality he has been, and will be seen to be, laying claim: as the old law phrase is, *continual claim*. Into the validity of this claim, the inquiry now continues itself. By himself — by any one for him — will this contestation be complained of? He has himself to thank for it. By him has the gauntlet been thrown down: by this inquiry it is not thrown down, but taken up.

So much for inclination. What, now, if the other requisite — ability — be wanting likewise? As to this, some judgment the reader is prepared to form already; meaning, always, *appropriate* ability: for, as to oratorical talent, supposing *inclination* opposite, so far from being the better, law reform would be all the worse for it.

To return to *inclination*. Of what, in the shape of patronage, his Lordship has given up, and, *per contra*, of what he has gained, mention has not, in any other than general terms, been thus far seen made. Now for particulars.

In the customary order, *profit* comes before *loss:* but, in the present case, the most suitable order is — loss before profit.

Here follows the account: —

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Patronage given up, as follows:—*

1. Commissionerships, 70.
2. Average annual emolument of each, £380
3. Average number of vacancies every year,† 4
4. Hence, average value of the whole number of the incomes, the right of appointment to, or say in one word, the patronage of which, is given up,—that is to say, the value in the hands of a man who has it in perpetuity, . . . £1520
5. Average number of years' continuance of the same man in the Chancellorship, 8.‡
6. Years' purchase, which an annuity for eight years is worth, between 6 and 7; for round numbers and ready calculation, say‖ . . 7

Six and a half would be more correct; but, the thus assumed number 7, being the same on both sides, the difference will not be material.

7. Hence, total value of the patronage given up, ... £10,640
—this being the average value of the four salaries, namely, the above £1520, multiplied by the number of years during which, according to the above-mentioned calculation, the right of appointment may be expected to remain in the same hands.

Per contra . . . . . Patronage gained, as under:—

1. New functionaries, 23.
2. Aggregate of their salaries,¶ £26,400
3. Average number of vacancies every year: being as the number of new functionaries (23) to that of the former functionaries (70,) say, for round numbers 69: that number being 4,† this will be one-third of 4, namely, 1⅓.
4. Hence, average amount of the salaries placed every year at the disposal of the Chancellor, by the vacancies of that year, ... £1530
—which sum, to give the total value of his patronage, over and above that of the appointments already made, will be to be multiplied by 7, as below.
5. Average number of years' continuance of the same man in the chancellorship as per contra, say 8.‡
6. Years' purchase which an annuity for eight years is worth, as per contra,‖ 7

7. Hence, total present value of patronage exercisable in future, ... £10,710

Hence, total value of the patronage gained, ... £37,110
Patronage given up, ... 10,640

Net profit, after deduction of the patronage given up, . . £26,470

Thus is the value of the patronage gained, more than three times that of the patronage given up.

So much for calculations and results: now for objections to them. "Vast," says somebody — "vast (it must be confessed) are these sums: vast, accordingly, would be the value of the patronage in question — the patronage gained by the noble and learned author of the measure, — supposing this same sum actually received by him. But, for the supposition of any receipt at all, at any rate, of any receipt approaching to the like of any such amount, what ground will you find? Yes: if he had children and grandchildren, all of whom he had to make provision for, and would have made provision for out of his own means, had it not been for this resource. But, for any such supposition, is there so much as the shadow of a ground?"

Not much (answer I:) not much — I must confess. But neither by this confession is

* On the per contra side, in the correspondent parts, the *words* are, as far as may be, the same, the *figures* alone different: of this identity, the use and consequence are,—that, to the purpose here in question, any error that may happen to be found may be seen to be the less material.

† As per report from individuals by whom observation has been made of the vacancies which occur from all causes whatsoever—from vacancies occasioned by changes and promotions, as well as by mortality. By *tables of mortality*, it would not, as I have been told, be so much as 2: cause of the difference, in the instance of the functionaries in question, vacancies produced by changes and promotions.

‡ Taken from the list of *Keepers of the Great Seal*, as per Beatson's Political Index.

‖ By report of an official accountant, consulted for this purpose, about 6½.

¶ £26,400.] In a tract, intituled "The Bankrupt Act, with introduction, notes, and index—by a Barrister, p. 23, the sum at which the total is set down is £24,000, and no more: a slip, surely, either of the pen or the press.

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confessed the impropriety of placing the sum in question to the account of *profit gained*.

In the first place — the question of chief practical importance, though it is but a collateral one, being as above shown, the one relative to *disinterestedness;* and this question turning — not upon *absolute*, but upon *comparative* values, namely, as between matter given up, and matter of the same sort gained, — the consequence is, that if the subject-matter in question were mere moonshine, it would not the less be entitled to a place in this account.

In the next place, this is one of the occasions to which the old saying about *meal and malt* applies: if he has it not in meal, he has it in malt; if he has it not in money, he has it in money's worth.

Reader, before you lie now the two sides of the evidence: which side (ask yourself) preponderates? — his Lordship's? His Lordship's, cry aloud in chorus the vast majority of those whose eyes either *gratitude* or *hope*, more especially the stronger power, keeps fixed upon the contents of the rich box of *bon-bons* which his Lordship has the distribution of: those members of the fourth estate not excepted, whose high lot (it has been said) it is to behold a frequent knife and fork lying before them at the noble and learned table: accordingly, to no person so beatified, is the question addressed. And, but for such patronage, from whom would this incense — all or any of it — be received?

For topics for this same incense, from which in this way the value of his Lordship's patronage receives increase, can there be any demand still remaining? No, surely: but, for argument's sake, suppose there were — a source from which it might receive completion, and *that* in a manner the most satisfactory, is a verse that may be seen, I do not remember in what page, of the *Gradus ad Parnassum*, the assistant so well known to all manufacturers of the so highly valuable commodity called a Latin hexameter verse. It consists of a verse by which any man to whom it happens to have a fancy for taking an airing in Greece at the top of Mount Parnassus, may with all facility, and as quickly as he could say Jack Robinson, as the saying is, give himself that gratification. It consists of eight words, which, when thus put together, constitute a panegyric on the blessed virgin, and have the curious property of composing an entire poem, of which any man who is curious enough may make himself the author. The property to which it is indebted for this magic power is this: the words are so selected, that in every order which they are capable of being made to assume, this sort of verse is composed of them. The verse is this: — "*Tot tibi sunt virgo dotes quot sidera cœlo:*" it is thus, by an arithmetical process, that so curious an effect is produced — ringing the changes upon these eight words. The following is a sample of the topics on which that same incense grounds itself: —

His admirable proficiency and exquisite skill in the art of disseminating "*useful knowledge*"* — the sound discernment and sound judgment displayed by him in the choice of subject-matters and operators — his skill in the creation of universities — that skill, of which *Londinia*† has already had, and her *Alma Soror Regia* is about to have, the benefit — his complete mastery of the theory and practice of legislation as it ought to be, as exemplified and demonstrated in and by his local courts' bill, and this his bankruptcy court bill, now so happily and triumphantly erected into an act.

No great chance is there (I must confess) — no great chance is there, of any Honourable Brougham, — who, smelling at the same nosegay with the Lord Erskine, may with him, in an *unlearned* state, feed with *thanksgiving* on about five thousand a-year, and with *hope*, or about as much more — exonerating his noble and learned father of the whole of this expense.

Profit, in *this* shape, it is true, he has not: but various *other* shapes there are in which he has it — shapes, having each of them its beauty; and in variety there is pleasure.

Calculate who can, the correspondent additional number of those, whom, like the members of one of James the First's parliaments, the additional patronage will throw "upon the knees of their hearts" (for in those days hearts had knees:) calculate this, and when your calculation is made, ask yourself what, when the means of sustenance are provided, what is it that money is good for, but to cause men to do the will of him who has it in his pocket? and, in a word, look the world all over, and say by how much is the appetite more canine for mammon in the shape of *money*, than for mammon in the shape of *power* in general, and in particular in the shape of *patronage?*

February 22, 1831, *Mirror*, p. 420. — "The only motive by which I am actuated, is the anxious and earnest wish to purify and amend the defects in the institutions of my country."

Such is his Lordship's "only motive." Nothing cares he about *fees:* nothing cares he about *salary:* nothing cares he about *patronage:* nothing cares he about *emolument*, in any imaginable shape: by any one, or all together, of the objects by the love of which the conduct of ordinary men is to such a degree hard driven, not a jog is capable of being given to his immoveable mind.

* See *Westminster Review* for April 1831.

† For his management of the University of London, see *Examiner* for August 28, 1831.

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So much for the *shadow;* now for the substance: so much for *make-believe* disinterestedness. Reader, have you any curiosity to see a sample of what, in relation to these same arrangements, real disinterestedness, in conjunction with appropriate intellectual aptitude, would have produced? If yes, take the trouble to read what follows:—

1. As to the *number* of the functionaries of all sorts; this number, not greater than that which has been found necessary: and to find what is the number necessary, proceed in manner elsewhere recommended. Proceed upon the *deputation system*, as above explained. Begin with the minimum number; add other functionaries, one by one, as the need receives demonstration from experience; in two words, *fiat experimentum:* this is what common sense, when it has for its companion common honesty, prescribes; this is what gave immortality to *Lord Bacon:* be not either ashamed or afraid to take a leaf out of the book of Lord Bacon.

2. Next, as to remuneration in the shape of *emoluments:* for the purpose of reducing them respectively to a minimum, employ *competition:* fear not to employ in this case that instrument, the application of which has the approval of everybody in every other case.

This you will do, unless the advice of common sense, in union with common honesty, be found or deemed too hard to be digestible.

As to emolument, is that same exclusively adequate instrument so startling, that blindly employed precedent is preferred to it? Look, then, to the case of the London police magistrates.* In that case, four hundred a-year was sufficient for their emolument, and therefore would be for these commissionerships, as has been elsewhere demonstrated by uncontroverted and uncontrovertible reasons; in addition to the demonstration afforded by the urgency of the applications at all times made for these same defunct commissionerships.

So much for *general* suggestions. Would you wish to see them applied to particulars? Proceed on, and read what follows:—

1. In the immediate judicatory, judge one, and no more.

2. So in the appellate judicatory.

3. Grades of jurisdiction, these two, and no more.

4. Appeal to the Chancellor, not any.

5. Appeal to the House of Lords, not any.

To this sham security, exists there any person, by whom an efficient and honestly-meant security would be regarded as preferable? Of the sort which I would venture to propose to him, a model may be seen in the paper styled "The Parliamentary Candidate's Declaration," &c. Purposes of it, amongst others, these:—1. To furnish to the functionary, as far as it goes, a distinct comprehensive view of the field to which his labours will be to be applied; 2. To call in the aid of the *popular* or say *moral* sanction, for securing appropriate moral aptitude, against departure from the right path, in ways to which the power of the legal sanction is not applicable; 3. To present to the minds of *locators*, a standard to which they may make application of what they understand to be the characters of the several persons locable, whom the occasion offers to their choice. *Locator*, on the present occasion, the Lord Chancellor: persons *locable*, all persons in whose instance adequate ground has place for regarding them as endowed with sufficient *intellectual* and *active*, without objection on the score of *moral*, aptitude.

Will it be said or thought, that for the commissioners in question, a more *extensive* portion of *law-learning* is requisite, than for police magistrates? To any such supposition, I make answer—

1. Not more, nor yet so much. Of these commissioners the jurisdiction is confined, in the branch of law called the *civil*, to a comparatively narrow corner of that field: and with the penal branch it has nothing, or next to nothing, to do: of the police magistrates, the jurisdiction spreads, in one way or other, over the penal branch in its whole extent, and over sub-branches in great variety of the *civil* branch.

2. For the possession of this so desirable an endowment on the part of his fee-sucking children, no real provision whatsoever, in and by this act, does the noble and learned father of it make: for the possession of this branch of appropriate aptitude, no better nor other security does it provide than was provided in the *police magistrates' salary-raising act*, by the right honourable sham reformer, in whose steps the noble and learned lord, on this occasion at least, treads blindfold. Eating, or making believe to eat, a certain number of dinners in one or other of four large apartments called *halls*, followed by a relative fast kept holy during a certain number of years, is the security with which Sir Robert Peel, in despite of all my remonstrances, remained inexorably well satisfied: and when, in the form of a bill, this same bankruptcy act was concocting, all the while, on the noble and learned table lay that work of mine, in which the absurdity and mischievousness of that same sham-security stands demonstrated.

3. On the occasion of his appointment, to *relevant* and appropriate law-learning no regard, or next to none, is ever paid: it is not the fashion. That which in this respect is the

* In "Official Aptitude Maximized," &c. "Observations on Mr. Peel's Police Magistrates' Salary-raising Bill," anno 1825. *Antea*, p. 328.

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fashion, there has been occasion to hold up to view elsewhere in these pages. Of what is called *equity*, what knew Lord Lyndhurst, when the charge of dealing out that high-priced commodity in so high a grade was put into his hands? What knew of it Lord Brougham — what knew of it Lord Vaux — or either of them? What opportunities — what means — of such knowledge had they had — these noble and learned persons, any of them? No: considerations styled political, alias *party*, were, as everybody knows and says, the cause of choice in those cases; the like considerations, or private and personal benefit, or good-liking, have of course been, and will continue to be, in these.

Thus much for a *stay-stomach*, until the time is arrived for application made of the all-comprehensive local judicatory system: the business of this temporary and make-shift institution of a special judicatory for bankruptcy business, will then be absorbed and merged into the common mass of the business of those several judicatories.

Noble and learned eyes! can you carry yourselves so far as to the other side of the Tweed? In Scotland, is there any bankruptcy court? No such thing. Any insolvency court? No such thing. And the assets of insolvent debtors — are they the less effectually disposed of for the benefit of creditors? No such thing.

In Scotland, had not the noble and learned father of this act, if not the whole, the last and finishing part, of his education? In his advocate's shape, did not — in his chancellor's state, have not already — those same noble and learned eyes found need to carry themselves all over that part of the island? There sits, moreover, the Lord Advocate. Scotland — has not she a sort of Attorney-General, but with authority much more extensive than the English Attorney-General, in the person of that same Lord Advocate? To the Lord Chancellor, had no opportunity ever presented itself of hearing how matters stand, in this respect, from that same Lord Advocate? Exists there that man with whom he is in habits of closer intimacy, or more constant communication, than with that same Lord Advocate?

Appropriate *examination*; and, for ascertaining the maximum of the pecuniary remuneration needful, *competition* — competition among those by whom the examination has been undergone — competition, that operation by which, between *dealers* and *customers*, prices in general are settled: — these are the instruments by which, according to my principles, economy and official aptitude are secured, and made to dwell together in perfect amity. This, in both departments — the *administrational* and the *judiciary*: but in the judiciary in particular, these form no more than a part of the securities which my code has provided for appropriate aptitude in the judiciary department.

For the good people at large, when the fulness of time shall have been accomplished, is all this information designed: — all this information, the object of which is — so to manage matters, as to cause the interest of functionaries, in all official situations, to be in exact coincidence with their respective duties. As to learned lords and gentlemen, whose eyes are so pertinaciously closed against all such information by a compound of sinister interest, interest-begotten prejudice, and authority-begotten prejudice, where is the lever long enough to wrench them open?

To doctrines such as these, when will public functionaries in general, and law-learned lords and gentlemen in particular, lend a willing ear, and act accordingly? When the population of Newgate and St. Giles's lend a like willing ear to a sermon having for its text "Thou shalt not steal," amend their ways, and act according to those words.

Alack-a-day! a little more, and I should have forgot to acknowledge the oath — the security afforded by that phantasmagoric cable, with such care and punctuality provided for binding a functionary to his duty. Well then, here it is. Not so much as one of all the whole three-and-twenty new functionaries — creatures of his Lordship's creation — not so much as one of them all is there by whom that same cable has not been, nor of the future contingent ones, by whom it will not have been, swallowed.

In regard to qualifications and security, thus, then, stands the matter. For appropriate *intellectual* aptitude, we have the security composed of the *manducatory* and the *jejunial*, as above mentioned: for appropriate *moral* aptitude, we have the *oath*: equivalent to which mockery, and instead of noxious, as that is, perfectly exempt and pure from all evil would have been the loyal song of *God save the king*; or, in learned language from the grammar of the royal school at Westminster, the harmonious couplet —

> "Litera si præsit vocalis pura vocatur,
> Ceu *reus*; impura est præsit si consona, ceu *rus*."

and here, in this same couplet with the word *pura*, as a gem set in it, might have been seen Morality, with her sister Intellectuality, hand in hand. Nonsense, so far as regards contribution to the end which ought to be kept in view, nonsense being the matter which that chosen *formula* is composed of, I propose this for a substitute to it, as being composed of less trashy nonsense!

Here ends the thread of these Observations: and here would end the whole publication, but for the demand for the reason of the change of the title from *Observations on the Bank-*

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ruptcy Court Bill to *Lord Brougham Displayed.*

Important as is this subject, there is one which is still more so; and that is, his continuance in the office now filled by him. Law reform, or a sham reform—on him, more than on any other man, depends the solution of the momentous question, which of the two shall be our lot? Shall it then continue, or shall it cease to be, filled by him? This is an ulterior question; a question, on the answer to which it depends whether during our joint lives any fruit can, with any hope of success, be looked for by the labours in which my long life has, the whole of it, found the greatest part of its occupation, and the dearest part of its hopes. Now, then, what is my situation? That of a man who finds imposed upon him the painful necessity of stopping the course of those same labours, for the purpose of doing what depends upon him towards conferring this benefit on his country and mankind.

Four occurrences present themselves, as the most prominent of those which have concurred in the production of this distressing persuasion: — 1. The charity inquiry job; 2. The advocacy of fee-gathering; 3. The opposition made by him to the ballot; 4. His education jobs.

1. First, as to the *charity inquiry* job.

For anything like a full and detailed examination of it, this is not the place: by a few general and leading observations, the course adapted to an instructive and useful examination of it may, perhaps, be seen to be pointed out.

1. So long as the judiciary system, with its procedure, continues to be what it is, not good, but evil, is what the inquiry, carried on as it is, not according to, but in contravention of, the *greatest-happiness* principle, will have for its net product.

2. So enormous is the factitious expense of procedure in the judicatories called *equity courts*, in which this business would have to be and is carried on, — that, before it had proceeded any comparatively considerable length — any length capable of contributing effectually to its professed purpose — namely, the institution of a system of all comprehensive national education, — parliament, the nation, and the treasury, would naturally, not to say necessarily, become impatient of it, and that in such sort, that to prevent further effusion of the life-blood of the treasury, a bandage would be applied to it.

As to the patronage, the persons by whom the benefit of it has been reaped, are his learned brethren the profession, in every branch of it to which the business has given employment.

In the report* which on this subject has been laid before the Honourable House, may be seen the amount of the business, with its profits, for which they stand indebted to this one of his institutions on that score.

Had anything better than power, patronage, and ambition-serving popularity — had, in a word, the happiness of the community been at the bottom of all this care of his, — would he, when the prospect of power and patronage had ceased, have turned his back upon this same charity business, and left it to deteriorate by neglect? No, surely. Now then, mark well how he dealt with it.

1. Quantity of time left unemployed in the *business*, four months out of the twelve;† so says an acknowledgment made by the chairman of the board — the person whose situation rendered it his interest to make the proportion of time employed in that same business as great as possible.

2. Quantity of time professed to be employed in the *journeys*, not more than four months out of the twelve.†

3. Quantity of time professed to be employed in digesting the documentary evidence and drawing up the reports thereupon made, the remaining four months — a quantity of time equal to that professed to be employed in the journeys and the elucidation of the evidence together.†

4. Every member left at liberty to employ himself in his professional pursuits for any portion of his time, at pleasure — of the time he was to be paid for at the rate of £1500 a-year at the public charge (so ordains the act;) on the *circuits* not excepted: actually so employed, these same functionaries one or more of them: one of them for and during a more or less considerable portion of his time occupied in the exercise of another office in *Ireland* — namely, that of *commissioner of Irish education.*†

5. By loss or destruction of documents, through negligence or wilfulness, charities in unknown numbers left exposed to be extinguished.

6. No thought bestowed on the prevention of breaches of trust in this shape in time future.

7. For the preservation of the several documents constitutive of title, an act some years ago having passed, the fruit of his so-anxiously fostering care, the object of it carried into effect in the instance of no more than a few counties, and then left in the state of a dead letter.*

Three several *modes* there are, in one or

* No. 361: date of the order for printing, 8th May 1830: title, Court of Chancery.

† House of Commons paper, March 18, 1828, No. 225, intituled "Evidence taken before the Finance Committee, and the Return laid before the Committee in 1828, which were presented to the House upon the 24th day of June 1828.—John William Warren, Esquire, called in and examined."—Pp. 2 to 6.

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more of which it is in the power of the fee-gatherer to make additions — and, generally speaking, to an indeterminate and unlimited amount — to the quantity of the depredation committed by him by means of this instrument: *one* is — by addition made to the quantity of the written matter, in proportion to which the addition is allowed to be made; *another* is — by addition made to the *number* of the *occasions* on which the fee is allowed to be exacted; and a *third* is — by addition made to the number of *days* or other portions of time at which he is occupied, or supposed to be occupied, in that same quantity of business, be it what it may; thus *splitting* the whole time into a number of fractions — their distance from each other determinate and limited, or indeterminate and unlimited — for the purpose, and with the effect, of exacting a fee for each such particle of *time;* thus giving increase to the *expense* imposed upon the parties interested, as also to the *delay*, in proportion not only to the number of these same particles of time, but also to the distance between each of them: three modes — all of them so many *concealed* modes — over and above the *open* mode, by addition made to the amount of each fee so allowed to be exacted; of which last, the effrontery of it notwithstanding, examples are not wanting.*

By the *quantity-enlarging* shape of the abuse, is produced the maleficent lengthiness of each portion of the statute-book, in the existing state of it; and thence will be produced the obstruction which will of course be opposed to every proposal for the removal of it: by the other, the *time-splitting* abuse, the enormity of the factitious quantity of delay with which are loaded the proposed laws termed *private bills*, throughout the course of their passage through parliament.

By its *quantity-enlarging* shape, in conjunction with the utter absence of all classification and order in the disposition of the matter, is produced the impossibility a man is under of coming at the knowledge of the *rights* of the benefit of which, without such knowledge, he must be deprived; of the *wrongs* to which, but for such knowledge, he must, without remedy, remain exposed, at the hands of all other individuals; and the punishments which he must remain exposed to suffer by the hands of government: and, in short, to fill up the measure of maleficence, to this abuse, in conjunction with the leaving the rule of action in the shape of the imaginary sort of law called unwritten law, alias *jurisprudential* law, alias *common* law, alias *judge-made* law, is owing the non-existence of an all-comprehensive code.

On two achievements is based whatsoever can be done in the way of law reform — namely, appropriate *codification*, and appropriate *judiciary establishment*, with its system of procedure. To the last of them his Lordship's implacable hostility is but too indisputable; it has already been held up to view: to the former, it is but too probable, not to say certain — sinister interest, interest-begotten prejudice, and interest-begotten sympathy, join with consistency in calling for it at his hands. Before him has all along lain that volume of mine, in which the demand for codification, and the demand for a new judiciary establishment, with its procedure code, are spread out in detail: of the latter, what use has been made by him, may be seen by whosoever has the requisite curiosity and patience.

By all these jobs of his, he has stretched out the right hand of fellowship to jobbers of all sorts, whose jobs are not of a magnitude too small to be included in such an alliance: giving thereby an invitation to maximize the number of the several jobs, the profit from each, and the quantity of the sustenance and life-blood of the community let out by every stab thus given to the constitution.

In his eulogium on education — in his "schoolmaster sent abroad" — he may have seen (and who will say of him that he did not see?) the schoolmaster sent abroad by him throughout all nations in the quality of *collector of the customs*, in the shape of praise, — to gather in the tribute of praise and popularity for his own behoof: laying it up in store, in readiness to be applied to whatsoever purpose the turn-up of affairs should at any time present him with an opportunity of employing it to advantage. Actions are no bad interpreters of intentions. Yes, to whatsoever purpose: and already have we seen to what sort of purposes his treasure, in this shape, has actually been applied. "And by this service," says some one, "has not great benefit been actually and already rendered? — rendered, *certainly* to *this* country, *probably* even to *others:* and, for this benefit, is not correspondent gratitude unquestionably his due?" *Answer:* Not altogether so assuredly. Gratification? Yes — gratification on our part; but *gratification* and *gratitude* are different things: cause for *gratification* is in proportion to *results:* but, cause for *gratitude* depends upon intentions. On the present occasion, the question is — this all-needful benefit, shall it or shall it not be received by us with gratitude? And if, how great soever the benefit may be, the party for whose service the benefit was intended, was not ourselves but himself alone, what is the claim it gives him upon our gratitude?

Ballot — what shall I say of the ballot? — what of his Lordship's sentiments in regard to

* See "*Indications respecting Lord Eldon*," in "*Official Aptitude Maximized*," &c. *antea*, p. 348.

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it?—to the question whether the opinion, the wish, the exercise given by man to his power as and for his own, shall be the result of his own will, or that of another man — of a man who acts as a tyrant over him?—whether such his act and deed shall be genuine or an imposture?—whether, by hundreds of thousands, Englishmen shall remain subjected to no other option, than that of each man violating his own conscience, or suffering pecuniary loss to an amount to which there is no other limit than that of the whole means of his subsistence? In this one feature, as in a mirror, behold the frame of mind of this our self-professed reformist.*

After an attack made, and *thus* made, upon one of the most admirable members this country ever saw of the most highly talented profession — one of the most amiable men I can think of in private life, I now take this my last departure from the subject.

Well, then, this being the manner in which *I* deal by *him*, what is the manner in which *he* deals by *me*? and this, after having seen the first part of these same Observations. Often does it happen to him to speak of me; seldom is any other terms than such as are a mixture of affection and even more than respect; never in terms of the opposite description: to this effect is what it has been my good fortune to hear, from a variety of quarters — with what a mixture of surprise and gratitude let any one imagine. Had the thought of a fillip to a single individual who has thus shown how little he cared about it, outweighed, in my mind, one of the most important ingredients in the welfare of the most extensive empire upon earth, not to speak of "the rest which it inhabit," I should have done otherwise; but, considering whom it has been written by, let any one judge, whether anything, that could be written with the *view* — the public and all-important view — these pages are written with, could be regarded as superfluous. JEREMY BENTHAM.

* In this my conception of his Lordship's frame of mind, do I stand alone? Of the contrary, the following epigram will present a demonstration. It has for its author an official person, who has for his duty the reporting his opinion of certain official proceedings; in how great a degree the severity of the character given of his said Lordship in that flight of fancy, goes beyond that given of him by this discussion, in the giving of which I am now occupied, will be visible to every eye. By this severity, two things will be demonstrated: 1. That this of mine is not singular; and 2. That so far is mine from being so, that *one* person there is, whose qualifications are objects of respect to more than *one* even of his Lordship's devoted friends, — yes, one person, at least, there is, who even goes beyond me in severity.

(From *The Examiner*, of August 14, 1831.)

THE FATE OF A BROOM.

AN ANTICIPATION.

Lo! in corruption's lumber-room,
The remnants of a wond'rous Broom,
That walking, talking, oft was seen,
Making stout promise to sweep clean;
But evermore, at every push,
Proved but a stump without a brush.
Upon its handle-top a sconce,
Like Brahma's, looked four ways at once;
Pouring on King, Lords, Church, and Rabble,
Long floods of favour-carrying gabble;
From four-fold mouth-piece, always spinning
Projects of plausible beginning,
Whereof said sconce did ne'er intend
That any one should have an end;
Yet, still, by shifts and quaint inventions,
Got credit for its good intentions,
Adding no trifle to the store,
Wherewith the Devil paves his floor.
Found out at last, worn bare and scrubbish,
And thrown aside, with other rubbish,
We'll e'en hand o'er the enchanted stick
As a choice present for Old Nick,
To sweep, beyond the Stygian lake,
The pavement it has helped to make.

March, 1831.

POSTSCRIPT.

AFTER the last word of this present work had been written, a book, which bears for its title *The Black Book*, was put into my hands by a friend, who had been witness to the writing of the pages of this work as it went on, and by whom the discovery had not been made before the day of his giving the information to me. It is inserted here, as another piece of evidence of the nature of that adduced in the preceding note.

"BROUGHAM, HENRY, *(Winchelsea,) Barrister at Law.*

"The political tendencies and acquirements of this Member have been so often set forth, that it would be a waste of the reader's time to indulge in disquisition on so trite a theme. A strange fatality seems to attend every project to which Mr. Brougham directs his efforts: no one has abounded in more useful suggestions, nor evinced greater and more searching powers in the exposition of abuses; yet it cannot be said he has originated and carried through a single measure by which the community has been materially benefited. This is a very "lame and impotent conclusion" after a public life of great bustle and considerable duration.

"Mr. Brougham's exposure of the abuses of Charitable Foundations, by which he showed the POOR had been robbed of near TWO MILLIONS of annual revenue by bishops, parsons, and gormandizing corporations, did him infinite honour; but nothing useful has resulted from the discovery of this mine of pious plunder. The learned gentleman suffered his bill on the subject to be frittered of all its usefulness and efficiency; the job got into the hands of commissioners, who, with enormous salaries, have been perambulating

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the country for years, under the pretext of investigation; they have published thirteen folio volumes of reports, and have thrown part of the property into chancery, but not a shilling appears yet to have been saved from the cormorants, and applied to the uses for which it was originally intended. All this delay and cumbrous machinery might have been saved; a single bill for a general restitution, or a local inquiry by persons not interested, was all that was needed.

"I pass over the Honourable Member's libel bill, and his bill for universal education; they were both so ill concocted, that they pleased no party, and came to nothing. The last project which has fallen under his paralizing touch, is the London university, and even this great and salutary scheme appears either dead or struggling for life under the influence of his baneful countenance. What the learned gentleman chiefly desiderates, is more concentration of purpose; like water spread upon a plain, his great powers are lost by diffusion: it is true, such discursive irrigation may fertilize, for a season, an extensive surface; but it is too weak to turn a mill, or produce permanent and visible effects. Another cause which impedes the usefulness of this really worthy man, and creates misgivings among his friends, is the uncertainty of his *moral* and *political* organization: he is not gay and profligate enough for a Tory; he is too independent for a Whig partisan, which doting faction never forgave him calling their late Grand Lama Ponsonby, "an old woman;" still he is often too circumspect and *personal* in his pursuits for a thorough patriot or reformer; and his late repulsive and snappish behaviour at Appleby shows that nature never intended him for a popular leader. These points are all exemplified in the Honourable Member's wiry and sinuous career, from his first introduction to Mr. Pitt, through his curvettings with the Westminster reformers, to his final and hopeless fixation in the Whig slough of despond.

"Leaving these general touches, I shall come to a subject on which Mr. Brougham is entitled to unqualified praise; I mean his efforts in favour of popular education. In the promotion of this noble object, his endeavours have been unceasing and invaluable; and he is the more entitled to gratitude, because it is a pursuit from which he can expect no personal advantage, while the benefits he may confer are incalculable. There is one point connected with the MECHANICS' INSTITUTIONS, in the success of which he takes so deep an interest, to which I should wish to call his attention. It is a pity, I think, the conductors of them should so exclusively direct their attention to the diffusion of a knowledge of the merely *physical* sciences: without depreciating any branch of knowledge, it is not conceivable how the lot of the working-classes can be bettered by an acquaintance with mechanics, acoustics, electricity, galvanism, and other branches of natural philosophy, which constitute the reiterated topics of institutional lectures. The miseries of society, in my opinion, result much more from moral and political causes than a want of physical knowledge and power. Nature has given to man fertile land, sun, and air, to produce his food, and it is the waste or misappropriation of the product of these, her almost spontaneous gifts, that chiefly creates ignorance, penury, and dependence.

"Political economy is a science of general application; every one, as landlord, merchant, or workman, being interested in the laws which regulate rent, profit, or wages. It also elucidates the important relation between subsistence and population. Till this great problem is universally understood, we cannot look forward to any permanent improvement in the condition of the people. Physical science may augment our productive powers, new machinery may be invented, rail-roads may be constructed, and the application of steam extended; still the lot of the people will not be improved: wages will be no higher, provisions no cheaper, the hours of labour no shorter; the only result being, that they will be *more numerous*, their dependent and necessitous condition remaining the same as before.

"Why, too, not have more frequent discourses on the medical art? It is lamentable to observe how much misery results from ignorance of the human constitution — the properties of food — the regulation of air and exercise — and other means by which the health is preserved and the constitution invigorated.

"The foundation of laws and morals might be explained, and the connexion between these and individual and social happiness would open a delightful field for eloquence and elucidation. History, especially of our own country, and, more particularly, that portion of it which refers to the rise of cities and towns, and the emancipation of the great body of the people from a state of worse than West-Indian bondage, would form an instructive inquiry. To these might be added geology, organic remains, and natural history, which would, I think, form popular themes; they would liberalize and expand the mind, abstract it from gross and vulgar pursuits, and create an appetite for intellectual research and disquisition.

"I have only one more suggestion to submit to Mr. Brougham. I trust, as soon as the new parliament assembles, he will move for the repeal of the 1 Geo. IV. c. 9, that act which restrains the sale of CHEAP PUBLICATIONS, by fixing the minimum of price

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at which they may be sold, and the smallest number of square inches on which a writer may circulate his ideas. This Vandal law was passed during the administration of that poor, illiterate, and shortsighted mortal, the Marquis of Londonderry. It is nothing less than a tax on the knowledge of the poor, and its injustice and iniquity can only be equalled by that which taxes the bread they eat, for the support of an overgrown aristocracy. Such a motion is required of Mr. Brougham for two reasons: first, to evince the sincerity of his wish to enlighten the popular mind; secondly, as an atonement for a former error, when, moving on one of his political tacks, he launched into declamatory invectives on the seditious and blasphemous tendency of the 'twopenny trash.' It is true, all the cheap publications were not conducted with 'absolute wisdom;' some of them were diabolical in their object, vulgar, violent, and un-English in the extreme. But along with these evils, considerable good resulted: they generated a taste for reading, inculcated a feeling of independency, gave the people a glimpse of their importance in the social scale, and, no doubt, sowed the seeds of that intellectual activity which promoted the establishment of the Mechanics' Institution, and diffused a thirst for an acquaintance with natural and mechanical truth."

The work from which the above has been extracted was published in October 1826; and it can hardly have escaped observation how prominently his Lordship's deficiencies on the subject of the diffusion of moral and political knowledge have been subsequently developed, in connexion with the Society instituted for Diffusion of Useful Knowledge, and also with relation to the Taxes on Knowledge.

[*In the original Edition, here follow Extracts from the Constitutional Code, viz.* Chap. XII. JUDICIARY COLLECTIVELY, § 5. Number in a Judicatory, *and* § 32. Judges, &c., Securities for Appropriate Aptitude. *These will be found in their appropriate places in this Collection.—Ed.*]

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